

Union Calendar No. 368

107TH CONGRESS
2D SESSION

H. R. 5005

[Report No. 107-609, Part I]

To establish the Department of Homeland Security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2002

Mr. ARMEY (for himself, Mr. HASTERT, Mr. DELAY, Mr. WATTS of Oklahoma, Mr. COX, Ms. PRYCE of Ohio, Mrs. CUBIN, Mr. TOM DAVIS of Virginia, Mr. BLUNT, Mr. PORTMAN, Mr. ADERHOLT, Mr. AKIN, Mr. BALLENGER, Mr. BARR of Georgia, Mr. BASS, Mr. BEREUTER, Mr. BOEHLERT, Mr. BONILLA, Mrs. BONO, Mr. BRADY of Texas, Mr. BROWN of South Carolina, Mr. BURTON of Indiana, Mr. BUYER, Mr. CALVERT, Mr. CAMP, Mr. CANTOR, Mrs. CAPITO, Mr. CASTLE, Mr. CHAMBLISS, Mr. COOKSEY, Mr. CRENSHAW, Mrs. JO ANN DAVIS of Virginia, Mr. DREIER, Mr. DEMINT, Ms. DUNN of Washington, Mr. EHRLICH, Mr. ENGLISH, Mr. FERGUSON, Mr. FORBES, Mr. FOSSELLA, Mr. GANSKE, Mr. GEKAS, Mr. GIBBONS, Mr. GILMAN, Mr. GILLMOR, Mr. GOODE, Ms. GRANGER, Mr. GREEN of Wisconsin, Mr. GREENWOOD, Mr. GRUCCI, Mr. HANSEN, Ms. HARMAN, Ms. HART, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HAYWORTH, Mr. HEFLEY, Mr. HERGER, Mr. HOEKSTRA, Mr. HORN, Mr. HOUGHTON, Mr. ISSA, Mr. JENKINS, Mrs. JOHNSON of Connecticut, Mr. KELLER, Mrs. KELLY, Mr. KING, Mr. KOLBE, Mr. LAHOOD, Mr. LINDER, Mr. McCRERY, Mr. McKEON, Mr. MALONEY of Connecticut, Mr. MANZULLO, Mr. DAN MILLER of Florida, Mr. GARY G. MILLER of California, Mrs. MORELLA, Mrs. MYRICK, Mr. NUSSLE, Mr. OSBORNE, Mr. OXLEY, Mr. PICKERING, Mr. PITTS, Mr. PUTNAM, Mr. REHBERG, Mr. ROHRBACHER, Mr. ROYCE, Mrs. ROUKEMA, Mr. RYUN of Kansas, Mr. SAXTON, Mr. SCHROCK, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SHAW, Mr. SHAYS, Mr. SHERWOOD, Mr. SIMPSON, Mr. SKEEN, Mr. SOUDER, Mr. SWEENEY, Mr. TANCREDO, Mr. TAUZIN, Mr. THORNBERRY, Mr. TIBERI, Mr. UPTON, Mr. SHIMKUS, Mr. WALDEN, Mr. WAMP, Mr. WELDON of Pennsylvania, Mr. WELLER, Mr. WHITFIELD, Mr. WICKER, Mrs. WILSON of New Mexico, and Mr. WILSON of South Carolina) (all by request) introduced the following bill; pursuant to House Resolution 449, referred to the Select Committee on Homeland Security

for a period to be subsequently determined by the Speaker, and in addition to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence (Permanent Select), International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means, for a period ending not later than July 12, 2002, in each case for consideration of such matters as fall within the jurisdiction of the committee concerned

JULY 12, 2002

The Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence (Permanent Select), International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means discharged

JULY 24, 2002

Additional sponsors: Mr. HYDE, Mr. SCHIFF, Mr. PENCE, Mr. BISHOP, and Mr. VITTER

JULY 24, 2002

Reported from the Select Committee on Homeland Security with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 24, 2002]

A BILL

To establish the Department of Homeland Security, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
5 *“Homeland Security Act of 2002”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
7 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Construction; severability.

Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.

Sec. 102. Secretary; functions.

Sec. 103. Other officers.

Sec. 104. National Council of First Responders.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.

Sec. 202. Functions transferred.

Sec. 203. Access to information.

Sec. 204. Procedures for sharing information.

Sec. 205. Privacy officer.

Sec. 206. Federal cybersecurity program.

Subtitle B—Intelligence Analysis Center

Sec. 211. Intelligence Analysis Center

Sec. 212. Mission of the Intelligence Analysis Center.

TITLE III—SCIENCE AND TECHNOLOGY

Sec. 301. Under Secretary for Science and Technology.

Sec. 302. Functions transferred.

Sec. 303. Conduct of certain public health-related activities.

Sec. 304. Federally funded research and development center.

Sec. 305. Miscellaneous provisions.

Sec. 306. Homeland Security Science and Technology Coordination Council.

Sec. 307. Conduct of research, development, demonstration, testing and evaluation.

Sec. 308. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Subtitle A—General Provisions

Sec. 401. Under Secretary for Border and Transportation Security.

Sec. 402. Functions transferred.

Sec. 403. Visa issuance.

Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.

Sec. 405. Functions of Administrator of General Services.

Sec. 406. Functions of Transportation Security Administration.

Sec. 407. Preservation of Transportation Security Administration as a distinct entity.

Sec. 408. Annual assessment of terrorist-related threats to public transportation.

Sec. 409. Explosive detection systems.

Sec. 410. Transportation security.

Subtitle B—Immigration and Nationality Functions

CHAPTER 1—IMMIGRATION ENFORCEMENT

- Sec. 411. Transfer of functions to under Secretary for Border and Transportation Security.*
- Sec. 412. Establishment of Bureau of Border Security.*
- Sec. 413. Professional responsibility and quality review.*
- Sec. 414. Employee discipline.*
- Sec. 415. Report on improving enforcement functions.*

CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

SUBCHAPTER A—TRANSFERS OF FUNCTIONS

- Sec. 421. Establishment of Bureau of Citizenship and Immigration Services.*
- Sec. 422. Citizenship and Immigration Services Ombudsman.*
- Sec. 423. Professional responsibility and quality review.*
- Sec. 424. Employee discipline.*
- Sec. 425. Office of Immigration Statistics within Bureau of Justice Statistics.*
- Sec. 426. Preservation of Attorney General's authority.*
- Sec. 427. Effective date.*
- Sec. 428. Transition.*

SUBCHAPTER B—OTHER PROVISIONS

- Sec. 431. Funding for citizenship and immigration services.*
- Sec. 432. Backlog elimination.*
- Sec. 433. Report on improving immigration services.*
- Sec. 434. Report on responding to fluctuating needs.*
- Sec. 435. Application of Internet-based technologies.*
- Sec. 436. Children's affairs.*

CHAPTER 3—GENERAL PROVISIONS

- Sec. 441. Abolishment of INS.*
- Sec. 442. Voluntary separation incentive payments.*
- Sec. 443. Authority to conduct a demonstration project relating to disciplinary action.*
- Sec. 444. Sense of Congress.*
- Sec. 445. Reports and implementation plans.*
- Sec. 446. Immigration functions.*

Subtitle C—United States Customs Service

- Sec. 451. Establishment; Commissioner of Customs.*
- Sec. 452. Retention of customs revenue functions by Secretary of the Treasury.*
- Sec. 453. Establishment and implementation of cost accounting system; reports.*
- Sec. 454. Preservation of Customs funds.*
- Sec. 455. Separate budget request for Customs.*
- Sec. 456. Payment of duties and fees.*
- Sec. 457. Definition.*
- Sec. 458. GAO report to Congress.*
- Sec. 459. Allocation of resources by the Secretary.*
- Sec. 460. Reports to Congress.*
- Sec. 461. Customs user fees.*

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

- Sec. 501. Under Secretary for Emergency Preparedness and Response.*
Sec. 502. Functions transferred.
Sec. 503. Nuclear incident response.
Sec. 504. Definition.
Sec. 505. Conduct of certain public-health related activities.

TITLE VI—MANAGEMENT

- Sec. 601. Under Secretary for Management.*
Sec. 602. Chief Financial Officer.
Sec. 603. Chief Information Officer.
Sec. 604. Establishment of Office for Civil Rights and Civil Liberties.

TITLE VII—MISCELLANEOUS

Subtitle A—Inspector General

- Sec. 701. Authority of the Secretary.*

Subtitle B—United States Secret Service

- Sec. 711. Functions transferred.*

Subtitle C—Critical Infrastructure Information

- Sec. 721. Short title.*
Sec. 722. Definitions.
Sec. 723. Designation of critical infrastructure protection program.
Sec. 724. Protection of voluntarily shared critical infrastructure information.
Sec. 725. No private right of action.

Subtitle D—Acquisitions

- Sec. 731. Research and development projects.*
Sec. 732. Personal services.
Sec. 733. Special streamlined acquisition authority.
Sec. 734. Procurements from small businesses.

Subtitle E—Property

- Sec. 741. Department headquarters.*

*Subtitle F—Support Anti-Terrorism by Fostering Effective Technologies Act of
2002 (the SAFETY Act)*

- Sec. 751. Short title.*
Sec. 752. Administration.
Sec. 753. Litigation management.
Sec. 754. Risk management.
Sec. 755. Definitions.

Subtitle G—Other Provisions

- Sec. 761. Establishment of human resources management system.*
Sec. 762. Advisory committees.
Sec. 763. Reorganization; transfer of appropriations.
Sec. 764. Miscellaneous authorities.

- Sec. 765. Military activities.*
- Sec. 766. Regulatory authority.*
- Sec. 767. Provisions regarding transfers from Department of Energy.*
- Sec. 768. Counternarcotics officer.*
- Sec. 769. Office of International Affairs.*
- Sec. 770. Prohibition of the terrorism information and prevention system.*
- Sec. 771. Review of pay and benefit plans.*
- Sec. 772. Role of the District of Columbia.*
- Sec. 773. Transfer of the Federal Law Enforcement Training Center.*

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

- Sec. 801. Definitions.*
- Sec. 802. Reorganization plan.*

Subtitle B—Transitional Provisions

- Sec. 811. Transitional authorities.*
- Sec. 812. Savings provisions.*
- Sec. 813. Terminations.*
- Sec. 814. Incidental transfers.*
- Sec. 815. National identification system not authorized.*
- Sec. 816. Continuity of Inspector General oversight.*
- Sec. 817. Reference.*

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

- Sec. 901. Inspector General Act of 1978.*
- Sec. 902. Executive Schedule.*
- Sec. 903. United States Secret Service.*
- Sec. 904. Coast Guard.*
- Sec. 905. Strategic National Stockpile and smallpox vaccine development.*
- Sec. 906. Biological agent registration; Public Health Service Act.*
- Sec. 907. Transfer of certain security and law enforcement functions and authorities.*
- Sec. 908. Transportation security regulations.*
- Sec. 909. Railroad security laws.*
- Sec. 910. Office of Science and Technology Policy.*
- Sec. 911. National Oceanographic Partnership Program.*
- Sec. 912. Chief Financial Officer.*
- Sec. 913. Chief Information Officer.*

TITLE X—NATIONAL HOMELAND SECURITY COUNCIL

- Sec. 1001. National Homeland Security Council.*
- Sec. 1002. Function.*
- Sec. 1003. Membership.*
- Sec. 1004. Other functions and activities.*
- Sec. 1005. Homeland security budget.*
- Sec. 1006. Staff composition.*
- Sec. 1007. Relation to the National Security Council.*

1 SEC. 2. DEFINITIONS.

2 *In this Act, the following definitions apply:*

1 (1) *Each of the terms “American homeland” and*
2 *“homeland” means the United States.*

3 (2) *The term “appropriate congressional com-*
4 *mittee” means any committee of the House of Rep-*
5 *resentatives or the Senate having legislative or over-*
6 *sight jurisdiction under the Rules of the House of*
7 *Representatives or the Senate, respectively, over the*
8 *matter concerned.*

9 (3) *The term “assets” includes contracts, facili-*
10 *ties, property, records, unobligated or unexpended bal-*
11 *ances of appropriations, and other funds or resources*
12 *(other than personnel).*

13 (4) *The term “critical infrastructure” has the*
14 *meaning given that term in section 1016(e) of Public*
15 *Law 107–56 (42 U.S.C. 5195c(e)).*

16 (5) *The term “Department” means the Depart-*
17 *ment of Homeland Security.*

18 (6) *The term “emergency response providers” in-*
19 *cludes Federal, State, and local emergency public*
20 *safety, law enforcement, emergency response, emer-*
21 *gency medical (including hospital emergency facili-*
22 *ties), and related personnel, agencies, and authorities.*

23 (7) *The term “executive agency” means an execu-*
24 *tive agency and a military department, as defined,*

1 *respectively, in sections 105 and 102 of title 5, United*
2 *States Code.*

3 (8) *The term “functions” includes authorities,*
4 *powers, rights, privileges, immunities, programs,*
5 *projects, activities, duties, and responsibilities.*

6 (9) *The term “key resources” means publicly or*
7 *privately controlled resources essential to the minimal*
8 *operations of the economy and government.*

9 (10) *The term “local government” means—*

10 (A) *a county, municipality, city, town,*
11 *township, local public authority, school district,*
12 *special district, intrastate district, council of*
13 *governments (regardless of whether the council of*
14 *governments is incorporated as a nonprofit cor-*
15 *poration under State law), regional or interstate*
16 *government entity, or agency or instrumentality*
17 *of a local government;*

18 (B) *an Indian tribe or authorized tribal or-*
19 *ganization, or Alaska Native village or organiza-*
20 *tion; and*

21 (C) *a rural community, unincorporated*
22 *town or village, or other public entity.*

23 (11) *The term “major disaster” has the meaning*
24 *given in section 102(2) of the Robert T. Stafford Dis-*

1 *aster Relief and Emergency Assistance Act (42 U.S.C.*
2 *5122).*

3 (12) *The term “personnel” means officers and*
4 *employees.*

5 (13) *The term “Secretary” means the Secretary*
6 *of Homeland Security.*

7 (14) *The term “State” means any State of the*
8 *United States, the District of Columbia, the Common-*
9 *wealth of Puerto Rico, the Virgin Islands, Guam,*
10 *American Samoa, the Commonwealth of the Northern*
11 *Mariana Islands, and any possession of the United*
12 *States.*

13 (15) *The term “terrorism” means any activity*
14 *that—*

15 (A) *involves an act that—*

16 (i) *is dangerous to human life or po-*
17 *tentially destructive of critical infrastruc-*
18 *ture or key resources; and*

19 (ii) *is a violation of the criminal laws*
20 *of the United States or of any State or other*
21 *subdivision of the United States; and*

22 (B) *appears to be intended—*

23 (i) *to intimidate or coerce a civilian*
24 *population;*

1 (ii) to influence the policy of a govern-
2 ment by intimidation or coercion; or

3 (iii) to affect the conduct of a govern-
4 ment by mass destruction, assassination, or
5 kidnapping.

6 (16) The term “United States”, when used in a
7 geographic sense, means any State of the United
8 States, the District of Columbia, the Commonwealth
9 of Puerto Rico, the Virgin Islands, Guam, American
10 Samoa, the Commonwealth of the Northern Mariana
11 Islands, any possession of the United States, and any
12 waters within the jurisdiction of the United States.

13 **SEC. 3. CONSTRUCTION; SEVERABILITY.**

14 Any provision of this Act held to be invalid or unen-
15 forceable by its terms, or as applied to any person or cir-
16 cumstance, shall be construed so as to give it the maximum
17 effect permitted by law, unless such holding shall be one
18 of utter invalidity or unenforceability, in which event such
19 provision shall be deemed severable from this Act and shall
20 not affect the remainder thereof, or the application of such
21 provision to other persons not similarly situated or to other,
22 dissimilar circumstances.

1 **SEC. 4. EFFECTIVE DATE.**

2 *This Act shall take effect thirty days after the date of*
3 *enactment or, if enacted within thirty days before January*
4 *1, 2003, on January 1, 2003.*

5 **TITLE I—DEPARTMENT OF**
6 **HOMELAND SECURITY**

7 **SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

8 *(a) ESTABLISHMENT.—There is established a Depart-*
9 *ment of Homeland Security, as an executive department of*
10 *the United States within the meaning of title 5, United*
11 *States Code.*

12 *(b) MISSION.—*

13 *(1) IN GENERAL.—The primary mission of the*
14 *Department is to—*

15 *(A) prevent terrorist attacks within the*
16 *United States;*

17 *(B) reduce the vulnerability of the United*
18 *States to terrorism;*

19 *(C) minimize the damage, and assist in the*
20 *recovery, from terrorist attacks that do occur*
21 *within the United States;*

22 *(D) carry out all functions of entities trans-*
23 *ferred to the Department, including by acting as*
24 *a focal point regarding natural and manmade*
25 *crises and emergency planning;*

1 (E) ensure that the functions of the agencies
 2 and subdivisions within the Department that are
 3 not related directly to securing the homeland are
 4 not diminished or neglected except by a specific
 5 explicit Act of Congress; and

6 (F) ensure that the overall economic secu-
 7 rity of the United States is not diminished by ef-
 8 forts, activities, and programs aimed at securing
 9 the homeland.

10 (2) *RESPONSIBILITY FOR INVESTIGATING AND*
 11 *PROSECUTING TERRORISM.—Except as specifically*
 12 *provided by law with respect to entities transferred to*
 13 *the Department under this Act, primary responsi-*
 14 *bility for investigating and prosecuting acts of ter-*
 15 *rorism shall be vested not in the Department, but*
 16 *rather in Federal, State, and local law enforcement*
 17 *agencies with jurisdiction over the acts in question.*

18 **SEC. 102. SECRETARY; FUNCTIONS.**

19 (a) *SECRETARY.—(1) There is a Secretary of Home-*
 20 *land Security, appointed by the President, by and with the*
 21 *advice and consent of the Senate.*

22 (2) *The Secretary is the head of the Department and*
 23 *shall have direction, authority, and control over it.*

1 (3) *All functions of all officers, employees, and organi-*
2 *zational units of the Department are vested in the Sec-*
3 *retary.*

4 (b) *FUNCTIONS.—The Secretary—*

5 (1) *except as otherwise provided by this Act, may*
6 *delegate any of the Secretary’s functions to any offi-*
7 *cer, employee, or organizational unit of the Depart-*
8 *ment;*

9 (2) *shall have the authority to make contracts,*
10 *grants, and cooperative agreements, and to enter into*
11 *agreements with other executive agencies, as may be*
12 *necessary and proper to carry out the Secretary’s re-*
13 *sponsibilities under this Act or otherwise provided by*
14 *law; and*

15 (3) *shall take reasonable steps to ensure that in-*
16 *formation systems and databases of the Department*
17 *are compatible with each other and with appropriate*
18 *databases of other Departments.*

19 (c) *COORDINATION WITH NON-FEDERAL ENTITIES.—*
20 *The Secretary shall coordinate (including the provision of*
21 *training and equipment) with State and local government*
22 *personnel, agencies, and authorities, with the private sector,*
23 *and with other entities, including by—*

24 (1) *coordinating with State and local govern-*
25 *ment personnel, agencies, and authorities, and with*

1 *the private sector, to ensure adequate planning,*
2 *equipment, training, and exercise activities;*

3 (2) *coordinating and, as appropriate, consoli-*
4 *dating, the Federal Government's communications*
5 *and systems of communications relating to homeland*
6 *security with State and local government personnel,*
7 *agencies, and authorities, the private sector, other en-*
8 *tities, and the public; and*

9 (3) *distributing or, as appropriate, coordinating*
10 *the distribution of, warnings and information to*
11 *State and local government personnel, agencies, and*
12 *authorities and to the public.*

13 (d) *MEETINGS OF NATIONAL SECURITY COUNCIL.—*
14 *The Secretary may, subject to the direction of the President,*
15 *attend and participate in meetings of the National Security*
16 *Council.*

17 (e) *ISSUANCE OF REGULATIONS.—The issuance of reg-*
18 *ulations by the Secretary shall be governed by the provisions*
19 *of chapter 5 of title 5, United States Code, except as specifi-*
20 *cally provided in this Act, in laws granting regulatory au-*
21 *thorities that are transferred by this Act, and in laws en-*
22 *acted after the date of enactment of this Act.*

23 (f) *SPECIAL ASSISTANT TO THE SECRETARY.—The*
24 *Secretary shall appoint a Special Assistant to the Secretary*
25 *who shall be responsible for—*

1 (1) *creating and fostering strategic communica-*
2 *tions with the private sector to enhance the primary*
3 *mission of the Department to protect the American*
4 *homeland;*

5 (2) *advising the Secretary on the impact of the*
6 *Department's policies, regulations, processes, and ac-*
7 *tions on the private sector;*

8 (3) *interfacing with other relevant Federal agen-*
9 *cies with homeland security missions to assess the im-*
10 *impact of these agencies' actions on the private sector;*

11 (4) *creating and managing private sector advi-*
12 *sory councils composed of representatives of industries*
13 *and associations designated by the Secretary to—*

14 (A) *advise the Secretary on private sector*
15 *products, applications, and solutions as they re-*
16 *late to homeland security challenges; and*

17 (B) *advise the Secretary on homeland secu-*
18 *rity policies, regulations, processes, and actions*
19 *that affect the participating industries and asso-*
20 *ciations;*

21 (5) *working with Federal laboratories, Federally*
22 *funded research and development centers, other Feder-*
23 *ally funded organizations, academia, and the private*
24 *sector to develop innovative approaches to address*
25 *homeland security challenges to produce and deploy*

1 *the best available technologies for homeland security*
 2 *missions;*

3 *(6) promoting existing public-private partner-*
 4 *ships and developing new public-private partnerships*
 5 *to provide for collaboration and mutual support to*
 6 *address homeland security challenges; and*

7 *(7) assisting in the development and promotion*
 8 *of private sector best practices to secure critical infra-*
 9 *structure.*

10 *(g) STANDARDS POLICY.—All standards activities of*
 11 *the Department shall be conducted in accordance with sec-*
 12 *tion 12(d) of the National Technology Transfer Advance-*
 13 *ment Act of 1995 (15 U.S.C. 272 note) and Office of Man-*
 14 *agement and Budget Circular A–119.*

15 **SEC. 103. OTHER OFFICERS.**

16 *(a) DEPUTY SECRETARY; UNDER SECRETARIES.—*
 17 *There are the following officers, appointed by the President,*
 18 *by and with the advice and consent of the Senate:*

19 *(1) A Deputy Secretary of Homeland Security,*
 20 *who shall be the Secretary’s first assistant for pur-*
 21 *poses of subchapter III of chapter 33 of title 5, United*
 22 *States Code.*

23 *(2) An Under Secretary for Information Anal-*
 24 *ysis and Infrastructure Protection.*

1 (3) *An Under Secretary for Science and Tech-*
2 *nology.*

3 (4) *An Under Secretary for Border and Trans-*
4 *portation Security.*

5 (5) *An Under Secretary for Emergency Pre-*
6 *paredness and Response.*

7 (6) *An Under Secretary for Management.*

8 (7) *Not more than four Assistant Secretaries.*

9 (8) *A Chief Financial Officer.*

10 (b) *INSPECTOR GENERAL.—There is an Inspector Gen-*
11 *eral, who shall be appointed as provided in section 3(a)*
12 *of the Inspector General Act of 1978.*

13 (c) *COMMANDANT OF THE COAST GUARD.—To assist*
14 *the Secretary in the performance of the Secretary's func-*
15 *tions, there is a Commandant of the Coast Guard, who shall*
16 *be appointed as provided in section 44 of title 14, United*
17 *States Code, and who shall report directly to the Secretary.*
18 *In addition to such duties as may be provided in this Act*
19 *and as assigned to the Commandant by the Secretary, the*
20 *duties of the Commandant shall include those required by*
21 *section 2 of title 14, United States Code.*

22 (d) *OTHER OFFICERS.—To assist the Secretary in the*
23 *performance of the Secretary's functions, there are the fol-*
24 *lowing officers, appointed by the President:*

1 (1) *A General Counsel, who shall be the chief*
 2 *legal officer of the Department.*

3 (2) *Not more than eight Assistant Secretaries.*

4 (3) *A Director of the Secret Service.*

5 (4) *A Chief Information Officer.*

6 (e) *PERFORMANCE OF SPECIFIC FUNCTIONS.*—Subject
 7 to the provisions of this Act, every officer of the Department
 8 shall perform the functions specified by law for the official's
 9 office or prescribed by the Secretary.

10 **SEC. 104. NATIONAL COUNCIL OF FIRST RESPONDERS.**

11 (a) *FINDINGS.*—The Congress finds the following:

12 (1) *First responders are key to protecting the*
 13 *health and safety of our citizens against disasters.*

14 (2) *First responders are the Nation's ready reac-*
 15 *tion force of dedicated and brave people who save lives*
 16 *and property when catastrophe strikes.*

17 (3) *First responders have the knowledge, train-*
 18 *ing, and experience to save lives, often under the most*
 19 *difficult conditions imaginable.*

20 (4) *First responders play an important role in*
 21 *helping to develop and implement advances in life*
 22 *saving technology.*

23 (5) *First responders are uniquely qualified to*
 24 *advise the Department of Homeland Security on the*

1 *role of first responders in defending our Nation*
2 *against terrorism.*

3 ***(b) ESTABLISHMENT AND ADMINISTRATION.—***

4 *(1) There is established within the Department of*
5 *Homeland Security a National Council of First Re-*
6 *sponders (in this section referred to as the “Council”).*

7 *(2) The President shall appoint the members of*
8 *the Council. The Council shall consist of not less than*
9 *100 members, no more than 10 of whom may be resi-*
10 *dents of the same State. Members of the Council shall*
11 *be selected from among the ranks of police, fire-*
12 *fighters, emergency medical technicians, rescue work-*
13 *ers, and hospital personnel who are employed in com-*
14 *munities, tribal governments, and political subdivi-*
15 *sions of various regions and population sizes.*

16 *(3) The Director of Homeland Security shall ap-*
17 *point a Chairman of the Council.*

18 *(4) Members shall be appointed to the Council*
19 *for a term of 3 years.*

20 *(5) Membership shall be staggered to provide*
21 *continuity.*

22 *(6) The Council shall meet no fewer than 2 times*
23 *each year.*

24 *(7) Members of the Council shall receive no com-*
25 *pensation for service on the Council.*

1 (8) *The Secretary shall detail a single employee*
2 *from the Department of Homeland Security to the*
3 *Council for the purposes of:*

4 (A) *Choosing meeting dates and locations.*

5 (B) *Coordinating travel.*

6 (C) *Other administrative functions as need-*
7 *ed.*

8 (c) *DUTIES.—The Council shall have the following du-*
9 *ties:*

10 (1) *Develop a plan to disseminate information*
11 *on first response best practices.*

12 (2) *Identify and educate the Secretary on the*
13 *latest technological advances in the field of first re-*
14 *sponse.*

15 (3) *Identify probable emerging threats to first re-*
16 *sponders.*

17 (4) *Identify needed improvements to first re-*
18 *sponse techniques and training.*

19 (5) *Identify efficient means of communication*
20 *and coordination between first responders and local,*
21 *State, and Federal officials.*

22 (6) *Identify areas in which the Department can*
23 *assist first responders.*

24 (7) *Evaluate the adequacy and timeliness of re-*
25 *sources being made available to local first responders.*

1 (d) *REPORTING REQUIREMENT.*—*The Council shall re-*
 2 *port to the Congress by October 1 of each year on how first*
 3 *responders can continue to be most effectively used to meet*
 4 *the ever-changing challenges of providing homeland security*
 5 *for the United States.*

6 ***TITLE II—INFORMATION ANAL-***
 7 ***YSIS AND INFRASTRUCTURE***
 8 ***PROTECTION***

9 ***Subtitle A—Under Secretary for In-***
 10 ***formation Analysis and Infra-***
 11 ***structure Protection***

12 ***SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS***
 13 ***AND INFRASTRUCTURE PROTECTION.***

14 *The Secretary, acting through the Under Secretary for*
 15 *Information Analysis and Infrastructure Protection, shall*
 16 *be responsible for the following:*

17 (1) *Conducting analysis of information, includ-*
 18 *ing foreign intelligence and open source information,*
 19 *lawfully collected by Federal, State and local law en-*
 20 *forcement agencies and by elements of the intelligence*
 21 *community with respect to threats of terrorist acts*
 22 *against the United States.*

23 (2) *Integrating information, intelligence, and in-*
 24 *telligence analyses to produce and disseminate infra-*

1 *structure vulnerability assessments with respect to*
2 *such threats.*

3 (3) *Identifying priorities for protective and sup-*
4 *port measures by the Department, by other executive*
5 *agencies, by State and local governments, by the pri-*
6 *vate sector, and by other entities.*

7 (4) *Reviewing, analyzing, and recommending*
8 *improvements in law, policy, and procedure for the*
9 *sharing of intelligence and other information with re-*
10 *spect to threats against the United States within the*
11 *Federal Government and between the Federal Govern-*
12 *ment and State and local governments.*

13 (5) *Under the direction of the Secretary, devel-*
14 *oping a comprehensive national plan to provide for*
15 *the security of key resources and critical infrastruc-*
16 *tures.*

17 (6) *Coordinating with other executive agencies,*
18 *State and local government personnel, agencies, and*
19 *authorities, and the private sector, to provide advice*
20 *on implementation of such comprehensive national*
21 *plan.*

22 (7) *Supporting the intelligence and information*
23 *requirements of the Department.*

24 (8) *Administering the Homeland Security Advi-*
25 *sory System, exercising primary responsibility for*

1 *public advisories relating to terrorist threats, and (in*
2 *coordination with other executive agencies) providing*
3 *specific warning information to State and local gov-*
4 *ernment personnel, agencies, and authorities, the pri-*
5 *vate sector, other entities, and the public, as well as*
6 *advice about appropriate protective actions and coun-*
7 *termeasures.*

8 **SEC. 202. FUNCTIONS TRANSFERRED.**

9 *In accordance with title VIII, there shall be transferred*
10 *to the Secretary the functions, personnel, assets, and obliga-*
11 *tions of the following:*

12 (1) *The National Infrastructure Protection Cen-*
13 *ter of the Federal Bureau of Investigation (other than*
14 *the Computer Investigations and Operations Section),*
15 *including the functions of the Attorney General relat-*
16 *ing thereto.*

17 (2) *The National Communications System of the*
18 *Department of Defense, including the functions of the*
19 *Secretary of Defense relating thereto.*

20 (3) *The Critical Infrastructure Assurance Office*
21 *of the Department of Commerce, including the func-*
22 *tions of the Secretary of Commerce relating thereto.*

23 (4) *The Energy Security and Assurance Pro-*
24 *gram of the Department of Energy, including the Na-*
25 *tional Infrastructure Simulation and Analysis Center*

1 *and the functions of the Secretary of Energy relating*
2 *thereto.*

3 (5) *The Federal Computer Incident Response*
4 *Center of the General Services Administration, in-*
5 *cluding the functions of the Administrator of General*
6 *Services relating thereto.*

7 **SEC. 203. ACCESS TO INFORMATION.**

8 *The Secretary shall have access to all reports, assess-*
9 *ments, and analytical information relating to threats of ter-*
10 *rorism in the United States and to other areas of responsi-*
11 *bility described in section 101(b), and to all information*
12 *concerning infrastructure or other vulnerabilities of the*
13 *United States to terrorism, whether or not such information*
14 *has been analyzed, that may be collected, possessed, or pre-*
15 *pared by any executive agency, except as otherwise directed*
16 *by the President. The Secretary shall also have access to*
17 *other information relating to the foregoing matters that*
18 *may be collected, possessed, or prepared by an executive*
19 *agency, as the President may further provide. With respect*
20 *to the material to which the Secretary has access under this*
21 *section—*

22 (1) *the Secretary may obtain such material by*
23 *request, and may enter into cooperative arrangements*
24 *with other executive agencies to share such material*

1 on a regular or routine basis, including requests or
2 arrangements involving broad categories of material;

3 (2) regardless of whether the Secretary has made
4 any request or entered into any cooperative arrange-
5 ment pursuant to paragraph (1), all executive agen-
6 cies promptly shall provide to the Secretary—

7 (A) all reports, assessments, and analytical
8 information relating to threats of terrorism in
9 the United States and to other areas of responsi-
10 bility described in section 101(b);

11 (B) all information concerning infrastruc-
12 ture or other vulnerabilities of the United States
13 to terrorism, whether or not such information
14 has been analyzed;

15 (C) all information relating to significant
16 and credible threats of terrorism in the United
17 States, whether or not such information has been
18 analyzed, if the President has provided that the
19 Secretary shall have access to such information;
20 and

21 (D) such other material as the President
22 may further provide;

23 (3) the Secretary shall have full access and input
24 with respect to information from any national col-
25 laborative information analysis capability (as re-

ferred to in section 924 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1199)) established jointly by the Secretary of Defense and the Director of Central Intelligence; and

(4) the Secretary shall ensure that any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties, and that any intelligence information shared under this section shall be transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act and related procedures or, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

SEC. 204. PROCEDURES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

1 (3) *protect the constitutional and statutory*
2 *rights of any individuals who are subjects of such in-*
3 *formation; and*

4 (4) *provide data integrity through the timely re-*
5 *moval and destruction of obsolete or erroneous names*
6 *and information.*

7 **SEC. 205. PRIVACY OFFICER.**

8 *The Secretary shall appoint a senior official in the De-*
9 *partment to assume primary responsibility for privacy pol-*
10 *icy, including—*

11 (1) *assuring that the use of information tech-*
12 *nologies sustain, and do not erode, privacy protec-*
13 *tions relating to the use, collection, and disclosure of*
14 *personal information;*

15 (2) *assuring that personal information contained*
16 *in Privacy Act systems of records is handled in full*
17 *compliance with fair information practices as set out*
18 *in the Privacy Act of 1974;*

19 (3) *evaluating legislative proposals involving col-*
20 *lection, use, and disclosure of personal information by*
21 *the Federal Government;*

22 (4) *conducting a privacy impact assessment of*
23 *proposed rules of the Department or that of the De-*
24 *partment on the privacy of personal information, in-*

1 cluding the type of personal information collected and
 2 the number of people affected; and

3 (5) preparing a report to Congress on an annual
 4 basis on activities of the Department that affect pri-
 5 vacy, including complaints of privacy violations, im-
 6 plementation of the Privacy Act of 1974, internal
 7 controls, and other matters.

8 **SEC. 206. FEDERAL CYBERSECURITY PROGRAM.**

9 (a) *IN GENERAL.*—The Secretary, acting through the
 10 Under Secretary for Information Analysis and Infrastruc-
 11 ture Protection, shall establish and manage a program to
 12 improve the security of Federal critical information sys-
 13 tems, including carrying out responsibilities under para-
 14 graphs (1) and (2) of section 201 that relate to such systems.

15 (b) *DUTIES.*—The duties of the Secretary under sub-
 16 section (a) are—

17 (1) to evaluate the increased use by civilian exec-
 18 utive agencies of techniques and tools to enhance the
 19 security of Federal critical information systems, in-
 20 cluding, as appropriate, consideration of cryptog-
 21 raphy;

22 (2) to provide assistance to civilian executive
 23 agencies in protecting the security of Federal critical
 24 information systems, including identification of sig-
 25 nificant risks to such systems; and

1 (3) *to coordinate research and development for*
2 *critical information systems relating to supervisory*
3 *control and data acquisition systems, including, as*
4 *appropriate, the establishment of a test bed.*

5 (c) *FEDERAL INFORMATION SYSTEM SECURITY*
6 *TEAM.—*

7 (1) *IN GENERAL.—In carrying out subsection*
8 *(b)(2), the Secretary shall establish, manage, and sup-*
9 *port a Federal information system security team*
10 *whose purpose is to provide technical expertise to ci-*
11 *vilian executive agencies to assist such agencies in se-*
12 *curing Federal critical information systems by con-*
13 *ducting information security audits of such systems,*
14 *including conducting tests of the effectiveness of infor-*
15 *mation security control techniques and performing*
16 *logical access control tests of interconnected computer*
17 *systems and networks, and related vulnerability as-*
18 *essment techniques.*

19 (2) *TEAM MEMBERS.—The Secretary shall ensure*
20 *that the team under paragraph (1) includes technical*
21 *experts and auditors, computer scientists, and com-*
22 *puter forensics analysts whose technical competence*
23 *enables the team to conduct audits under such para-*
24 *graph.*

1 (3) *AGENCY AGREEMENTS REGARDING AUDITS.*—

2 *Each civilian executive agency may enter into an*
3 *agreement with the team under paragraph (1) for the*
4 *conduct of audits under such paragraph of the Fed-*
5 *eral critical information systems of the agency. Such*
6 *agreement shall establish the terms of the audit and*
7 *shall include provisions to minimize the extent to*
8 *which the audit disrupts the operations of the agency.*

9 (4) *REPORTS.*—*Promptly after completing an*
10 *audit under paragraph (1) of a civilian executive*
11 *agency, the team under such paragraph shall prepare*
12 *a report summarizing the findings of the audit and*
13 *making recommendations for corrective action. Such*
14 *report shall be submitted to the Secretary, the head of*
15 *such agency, and the Inspector General of the agency*
16 *(if any), and upon request of any congressional com-*
17 *mittee with jurisdiction over such agency, to such*
18 *committee.*

19 (d) *DEFINITION.*—*For purposes of this section, the*
20 *term “Federal critical information system” means an “in-*
21 *formation system” as defined in section 3502 of title 44,*
22 *United States Code, that—*

23 (1) *is, or is a component of, a key resource or*
24 *critical infrastructure;*

1 (2) *is used or operated by a civilian executive*
 2 *agency or by a contractor of such an agency; and*

3 (3) *does not include any national security sys-*
 4 *tem as defined in section 5142 of the Clinger-Cohen*
 5 *Act of 1996.*

6 ***Subtitle B—Intelligence Analysis***
 7 ***Center***

8 ***SEC. 211. INTELLIGENCE ANALYSIS CENTER.***

9 (a) *ESTABLISHMENT; NFIP AGENCY.*—(1) *There is es-*
 10 *tablished within the Department the Intelligence Analysis*
 11 *Center. The Under Secretary for Information Analysis and*
 12 *Infrastructure Protection shall be the head of the Intel-*
 13 *ligence Analysis Center.*

14 (2) *The Intelligence Analysis Center is a program of*
 15 *the intelligence community for purposes of the National*
 16 *Foreign Intelligence Program (as defined in section 3(6) of*
 17 *the National Security Act of 1947 (50 U.S.C. 401a(6))).*

18 (b) *FUNCTIONS.*—*The Under Secretary for Informa-*
 19 *tion Analysis and Infrastructure Protection, through the*
 20 *Intelligence Analysis Center, shall carry out the duties spec-*
 21 *ified in paragraphs (1), (2), (3), (6), and (7) of section*
 22 *201(b).*

23 (c) *DETAIL OF CERTAIN PERSONNEL.*—

24 (1) *IN GENERAL.*—*The Secretary and the Direc-*
 25 *tor of Central Intelligence, the Secretary of Defense,*

1 *the Attorney General, the Secretary of State, or the*
 2 *head of another agency or department as the case*
 3 *may be, shall enter into cooperative arrangements to*
 4 *provide for an appropriate number of individuals to*
 5 *be detailed to the Under Secretary to perform analyt-*
 6 *ical functions and duties with respect to the mission*
 7 *of the Department from the following agencies:*

8 *(A) The Central Intelligence Agency.*

9 *(B) The Federal Bureau of Investigation.*

10 *(C) The National Security Agency.*

11 *(D) The National Imagery and Mapping*
 12 *Agency.*

13 *(E) The Department of State.*

14 *(F) The Defense Intelligence Agency.*

15 *(G) Any other agency or department that*
 16 *the President determines appropriate.*

17 *(2) TERMS OF DETAIL.—Any officer or employee*
 18 *of the United States or a member of the Armed Forces*
 19 *who is detailed to the Under Secretary under para-*
 20 *graph (1) shall be detailed on a reimbursable basis for*
 21 *a period of less than two years for the performance*
 22 *of temporary functions as required by the Under Sec-*
 23 *retary.*

24 *(d) INCLUSION OF OFFICE OF INTELLIGENCE AS AN*
 25 *ELEMENT OF THE INTELLIGENCE COMMUNITY.—Section*

1 *3(4) of the National Security Act of 1947 (50 U.S.C.*
 2 *401a(4)) is amended—*

3 *(1) by striking “and” at the end of subpara-*
 4 *graph (I);*

5 *(2) by redesignating subparagraph (J) as sub-*
 6 *paragraph (K); and*

7 *(3) by inserting after subparagraph (I) the fol-*
 8 *lowing new subparagraph:*

9 *“(J) the Intelligence Analysis Center of the*
 10 *Department of Homeland Security; and”.*

11 ***SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CEN-***
 12 ***TER.***

13 *(a) IN GENERAL.—The mission of the Intelligence*
 14 *Analysis Center is as follows:*

15 *(1) ANALYSIS AND PRODUCTION.—*

16 *(A) Correlating and evaluating information*
 17 *and intelligence related to the mission of the De-*
 18 *partment collected from all sources available.*

19 *(B) Producing all-source collaborative intel-*
 20 *ligence analysis, warnings, tactical assessments,*
 21 *and strategic assessments of the terrorist threat*
 22 *and infrastructure vulnerabilities of the United*
 23 *States.*

24 *(C) Providing appropriate dissemination of*
 25 *such assessments.*

1 (D) *Improving the lines of communication*
2 *with respect to homeland security between the*
3 *Federal Government and State and local public*
4 *safety agencies and the private sector through the*
5 *timely dissemination of information pertaining*
6 *to threats of acts of terrorism against the United*
7 *States.*

8 (2) *COORDINATION OF INFORMATION.—Coordi-*
9 *nating with elements of the intelligence community*
10 *and with Federal, State, and local law enforcement*
11 *agencies, and the private sector as appropriate.*

12 (3) *ADDITIONAL DUTIES.—Performing such*
13 *other functions as the Secretary may direct.*

14 (b) *STRATEGIC AND TACTICAL MISSIONS OF THE IN-*
15 *TELLIGENCE ANALYSIS CENTER.—The Under Secretary*
16 *shall conduct strategic and tactical assessments and warn-*
17 *ings through the Intelligence Analysis Center, including re-*
18 *search, analysis, and the production of assessments on the*
19 *following as they relate to the mission of the Department:*

20 (1) *Domestic terrorism.*

21 (2) *International terrorism.*

22 (3) *Counterintelligence.*

23 (4) *Transnational crime.*

24 (5) *Proliferation of weapons of mass destruction.*

25 (6) *Illicit financing of terrorist activities.*

1 (7) *Cybersecurity and cybercrime.*

2 (8) *Key resources and critical infrastructures.*

3 (c) *STAFFING OF THE INTELLIGENCE ANALYSIS CEN-*

4 *TER.*—

5 (1) *FUNCTIONS TRANSFERRED.*—*In accordance*
6 *with title VIII, for purposes of carrying out this title,*
7 *there is transferred to the Under Secretary the func-*
8 *tions, personnel, assets, and liabilities of the following*
9 *entities:*

10 (A) *The National Infrastructure Protection*
11 *Center of the Federal Bureau of Investigation*
12 *(other than the Computer Investigations and Op-*
13 *erations Section).*

14 (B) *The Critical Infrastructure Assurance*
15 *Office of the Department of Commerce.*

16 (C) *The Federal Computer Incident Re-*
17 *sponse Center of the General Services Adminis-*
18 *tration.*

19 (D) *The National Infrastructure Simulation*
20 *and Analysis Center of the Department of En-*
21 *ergy.*

22 (E) *The National Communications System*
23 *of the Department of Defense.*

24 (F) *The intelligence element of the Coast*
25 *Guard.*

1 (G) *The intelligence element of the United*
 2 *States Customs Service.*

3 (H) *The intelligence element of the Immi-*
 4 *gration and Naturalization Service.*

5 (I) *The intelligence element of the Transpor-*
 6 *tation Security Administration.*

7 (J) *The intelligence element of the Federal*
 8 *Protective Service.*

9 (2) *STRUCTURE.—It is the sense of Congress that*
 10 *the Under Secretary should model the Intelligence*
 11 *Analysis Center on the technical, analytic approach*
 12 *of the Information Dominance Center of the Depart-*
 13 *ment of the Army to the maximum extent feasible and*
 14 *appropriate.*

15 **TITLE III—SCIENCE AND** 16 **TECHNOLOGY**

17 **SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECH-** 18 **NOLOGY.**

19 *The Secretary, acting through the Under Secretary for*
 20 *Science and Technology, shall have responsibility for—*

21 (1) *developing, in consultation with other appro-*
 22 *priate executive agencies, a national policy and stra-*
 23 *tegic plan for, identifying priorities, goals, objectives*
 24 *and policies for, and coordinating the Federal Gov-*
 25 *ernment's civilian efforts to identify and develop*

1 *countermeasures to chemical, biological radiological,*
2 *nuclear and other emerging terrorist threats, includ-*
3 *ing the development of comprehensive, research-based*
4 *definable goals for such efforts and development of an-*
5 *ual measurable objectives and specific targets to ac-*
6 *complish and evaluate the goals for such efforts;*

7 *(2) establishing and administering the primary*
8 *research and development activities of the Depart-*
9 *ment, including the long-term research and develop-*
10 *ment needs and capabilities for all elements of the De-*
11 *partment;*

12 *(3) conducting basic and applied research, devel-*
13 *opment, demonstration, testing, and evaluation ac-*
14 *tivities that are relevant to any or all elements of the*
15 *Department, through both intramural and extramural*
16 *programs; provided that such responsibility does not*
17 *extend to human health-related research and develop-*
18 *ment activities;*

19 *(4) coordinating and integrating all research, de-*
20 *velopment, demonstration, testing, and evaluation ac-*
21 *tivities of the Department;*

22 *(5) coordinating with other appropriate execu-*
23 *tive agencies in developing and carrying out the*
24 *science and technology agenda of the Department to*
25 *reduce duplication and identify unmet needs;*

1 (6) *establishing Federal priorities for research,*
2 *development, demonstration, testing, and, as appro-*
3 *priate, procurement and transitional operation of*
4 *technology and systems—*

5 (A) *for preventing the importation of chem-*
6 *ical, biological, radiological, and nuclear weap-*
7 *ons and related materials;*

8 (B) *for detecting, preventing, and protecting*
9 *against terrorist attacks that involve such weap-*
10 *ons or related materials; and*

11 (C) *for interoperability of communications*
12 *systems for emergency response providers;*

13 (7) *ensuring that the research, development, dem-*
14 *onstration, testing, and evaluation activities of the*
15 *Department are aligned with the Department's pro-*
16 *curement needs;*

17 (8) *facilitating the deployment of technology that*
18 *will serve to enhance homeland security, including*
19 *through the establishment of a centralized Federal re-*
20 *pository for information relating to technologies de-*
21 *scribed in subparagraphs (A), (B), and (C) of para-*
22 *graph (6) for dissemination to Federal, State, and*
23 *local government and private sector entities, and for*
24 *information for persons seeking guidance on how to*

1 *pursue proposals to develop or deploy technologies*
 2 *that would contribute to homeland security;*

3 *(9) providing guidance, recommendations, and*
 4 *technical assistance as appropriate to assist Federal,*
 5 *State, and local government and private sector efforts*
 6 *to evaluate and implement the use of technologies de-*
 7 *scribed in subparagraphs (A), (B), and (C) of para-*
 8 *graph (6); and*

9 *(10) developing and overseeing the administra-*
 10 *tion of guidelines for merit review of research and de-*
 11 *velopment projects throughout the Department, and*
 12 *for the dissemination of research conducted or spon-*
 13 *sored by the Department.*

14 **SEC. 302. FUNCTIONS TRANSFERRED.**

15 *In accordance with title VIII, there shall be transferred*
 16 *to the Secretary the functions, personnel, assets, and obliga-*
 17 *tions of the following:*

18 *(1) The program under section 351A of the Pub-*
 19 *lic Health Service Act, and functions thereof, includ-*
 20 *ing the functions of the Secretary of Health and*
 21 *Human Services relating thereto, subject to the*
 22 *amendments made by section 906(a)(3), except that*
 23 *such transfer shall not occur unless the program*
 24 *under section 212 of the Agricultural Bioterrorism*
 25 *Protection Act of 2002 (subtitle B of title II of Public*

1 *Law 107–188), and functions thereof, including the*
2 *functions of the Secretary of Agriculture relating*
3 *thereto, is transferred to the Department.*

4 *(2) Programs and activities of the Department of*
5 *Energy, including the functions of the Secretary of*
6 *Energy relating thereto (but not including programs*
7 *and activities relating to the strategic nuclear defense*
8 *posture of the United States), as follows:*

9 *(A) The programs and activities relating to*
10 *chemical and biological national security, and*
11 *supporting programs and activities directly re-*
12 *lated to homeland security, of the non-prolifera-*
13 *tion and verification research and development*
14 *program.*

15 *(B) The programs and activities relating to*
16 *nuclear smuggling, and other programs and ac-*
17 *tivities directly related to homeland security,*
18 *within the proliferation detection program of the*
19 *non-proliferation and verification research and*
20 *development program.*

21 *(C) Those aspects of the nuclear assessment*
22 *program of the international materials protec-*
23 *tion and cooperation program that are directly*
24 *related to homeland security.*

1 (D) *Such life sciences activities of the bio-*
2 *logical and environmental research program re-*
3 *lated to microbial pathogens as may be des-*
4 *ignated by the President for transfer to the De-*
5 *partment and that are directly related to home-*
6 *land security.*

7 (E) *The Environmental Measurements Lab-*
8 *oratory.*

9 (F) *The advanced scientific computing re-*
10 *search program and activities at Lawrence*
11 *Livermore National Laboratory.*

12 (3) *The homeland security projects within the*
13 *Chemical Biological Defense Program of the Depart-*
14 *ment of Defense known as the Biological Defense*
15 *Homeland Security Support Program and the Bio-*
16 *logical Counter-Terrorism Research Program.*

17 **SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
18 **ACTIVITIES.**

19 *With respect to civilian human health-related research*
20 *and development activities relating to countermeasures for*
21 *chemical, biological, radiological, and nuclear and other*
22 *emerging terrorist threats carried out by the Department*
23 *of Health and Human Services (including the Public*
24 *Health Service), the Secretary of Health and Human Serv-*
25 *ices shall set priorities, goals, objectives, and policies and*

1 *develop a coordinated strategy for such activities in collabo-*
 2 *ration with the Secretary of Homeland Security to ensure*
 3 *consistency with the national policy and strategic plan de-*
 4 *veloped pursuant to section 301(1).*

5 **SEC. 304. FEDERALLY FUNDED RESEARCH AND DEVELOP-**
 6 **MENT CENTER.**

7 *The Secretary, acting through the Under Secretary for*
 8 *Science and Technology, shall have the authority to estab-*
 9 *lish or contract with one or more federally funded research*
 10 *and development centers to provide independent analysis*
 11 *of homeland security issues, or to carry out other respon-*
 12 *sibilities under this Act, including coordinating and inte-*
 13 *grating both the extramural and intramural programs de-*
 14 *scribed in section 307.*

15 **SEC. 305. MISCELLANEOUS PROVISIONS.**

16 (a) *CLASSIFICATION.*—*To the greatest extent prac-*
 17 *ticable, research conducted or supported by the Department*
 18 *shall be unclassified.*

19 (b) *CONSTRUCTION.*—*Nothing in this title shall be con-*
 20 *strued to preclude any Under Secretary of the Department*
 21 *from carrying out research, development, demonstration, or*
 22 *deployment activities, as long as such activities are coordi-*
 23 *nated through the Under Secretary for Science and Tech-*
 24 *nology.*

1 (c) *REGULATIONS.*—*The Secretary, acting through the*
 2 *Under Secretary for Science and Technology, may issue*
 3 *necessary regulations with respect to research, development,*
 4 *demonstration, testing, and evaluation activities of the De-*
 5 *partment, including the conducting, funding, and reviewing*
 6 *of such activities.*

7 (d) *NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES*
 8 *DESIGNATIONS.*—*Not later than 60 days before effecting*
 9 *any transfer of Department of Energy life sciences activities*
 10 *pursuant to section 302(2)(D) of this Act, the President*
 11 *shall notify the Congress of the proposed transfer and shall*
 12 *include the reasons for the transfer and a description of*
 13 *the effect of the transfer on the activities of the Department*
 14 *of Energy.*

15 **SEC. 306. HOMELAND SECURITY SCIENCE AND TECH-**
 16 **NOLOGY COORDINATION COUNCIL.**

17 (a) *ESTABLISHMENT AND COMPOSITION.*—*There is es-*
 18 *tablished within the Department a Homeland Security*
 19 *Science and Technology Coordination Council (in this sec-*
 20 *tion referred to as the “Coordination Council”). The Co-*
 21 *ordination Council shall be composed of all the Under Sec-*
 22 *retaries of the Department and any other Department offi-*
 23 *cials designated by the Secretary, and shall be chaired by*
 24 *the Under Secretary for Science and Technology. The Co-*
 25 *ordination Council shall meet at the call of the chair.*

1 (b) *RESPONSIBILITIES.*—*The Coordination Council*
 2 *shall—*

3 (1) *establish priorities for research, development,*
 4 *demonstration, testing, and evaluation activities con-*
 5 *ducted or supported by the Department;*

6 (2) *ensure that the priorities established under*
 7 *paragraph (1) reflect the acquisition needs of the De-*
 8 *partment; and*

9 (3) *assist the Under Secretary for Science and*
 10 *Technology in carrying out his responsibilities under*
 11 *section 301(4).*

12 **SEC. 307. CONDUCT OF RESEARCH, DEVELOPMENT, DEM-**
 13 **ONSTRATION, TESTING AND EVALUATION.**

14 (a) *IN GENERAL.*—*The Secretary, acting through the*
 15 *Under Secretary for Science and Technology, shall carry*
 16 *out the responsibilities under section 301(3) through both*
 17 *extramural and intramural programs.*

18 (b) *EXTRAMURAL PROGRAMS.*—(1) *The Secretary, act-*
 19 *ing through the Under Secretary for Science and Tech-*
 20 *nology, shall operate extramural research, development,*
 21 *demonstration, testing, and evaluation programs so as to—*

22 (A) *ensure that colleges, universities, private re-*
 23 *search institutes, and companies (and consortia there-*
 24 *of) from as many areas of the United States as prac-*
 25 *ticable participate; and*

1 (B) distribute funds through grants, cooperative
2 agreements, and contracts through competitions that
3 are as open as possible.

4 (2)(A) The Secretary, acting through the Under Sec-
5 retary for Science and Technology, shall establish within
6 1 year of the date of enactment of this Act a university-
7 based center or centers for homeland security. The purpose
8 of this center or centers shall be to establish a coordinated,
9 university-based system to enhance the Nation's homeland
10 security.

11 (B) In selecting colleges or universities as centers for
12 homeland security, the Secretary shall consider the fol-
13 lowing criteria:

14 (i) Demonstrated expertise in the training of
15 first responders.

16 (ii) Demonstrated expertise in responding to in-
17 cidents involving weapons of mass destruction and bi-
18 ological warfare.

19 (iii) Demonstrated expertise in emergency med-
20 ical services.

21 (iv) Demonstrated expertise in chemical, biologi-
22 cal, radiological, and nuclear countermeasures.

23 (v) Strong affiliations with animal and plant
24 diagnostic laboratories.

25 (vi) Demonstrated expertise in food safety.

1 (vii) *Affiliation with Department of Agriculture*
2 *laboratories or training centers.*

3 (viii) *Demonstrated expertise in water and*
4 *wastewater operations.*

5 (ix) *Demonstrated expertise in port and water-*
6 *way security.*

7 (x) *Demonstrated expertise in multi-modal*
8 *transportation.*

9 (xi) *Nationally recognized programs in informa-*
10 *tion security.*

11 (xii) *Nationally recognized programs in engi-*
12 *neering.*

13 (xiii) *Demonstrated expertise in educational out-*
14 *reach and technical assistance.*

15 (xiv) *Demonstrated expertise in border transpor-*
16 *tation and security.*

17 (xv) *Demonstrated expertise in interdisciplinary*
18 *public policy research and communication outreach*
19 *regarding science, technology, and public policy.*

20 (C) *The Secretary shall have the discretion to establish*
21 *such centers and to consider additional criteria as necessary*
22 *to meet the evolving needs of homeland security and shall*
23 *report to Congress concerning the implementation of this*
24 *paragraph as necessary.*

1 (D) *There are authorized to be appropriated such sums*
2 *as may be necessary to carry out this paragraph.*

3 (c) *INTRAMURAL PROGRAMS.—(1) In carrying out the*
4 *duties under section 301, the Secretary, acting through the*
5 *Under Secretary for Science and Technology, may draw*
6 *upon the expertise of any laboratory of the Federal Govern-*
7 *ment, whether operated by a contractor or the Government.*
8 (2) *The Secretary, acting through the Under Secretary*
9 *for Science and Technology, may establish a headquarters*
10 *laboratory for the Department at any national laboratory*
11 *and may establish additional laboratory units at other na-*
12 *tional laboratories.*

13 (3) *If the Secretary chooses to establish a headquarters*
14 *laboratory pursuant to paragraph (2), then the Secretary*
15 *shall do the following:*

16 (A) *Establish criteria for the selection of the*
17 *headquarters laboratory in consultation with the Na-*
18 *tional Academy of Sciences, appropriate Federal*
19 *agencies, and other experts.*

20 (B) *Publish the criteria in the Federal Register.*

21 (C) *Evaluate all appropriate national labora-*
22 *tories against the criteria.*

23 (D) *Select a national laboratory on the basis of*
24 *the criteria.*

1 (E) Report to the appropriate congressional com-
 2 mittees on which laboratory was selected, how the se-
 3 lected laboratory meets the published criteria, and
 4 what duties the headquarters laboratory shall per-
 5 form.

6 (4) No laboratory shall begin operating as the head-
 7 quarters laboratory of the Department until at least 30 days
 8 after the transmittal of the report required by paragraph
 9 (3)(E).

10 **SEC. 308. TRANSFER OF PLUM ISLAND ANIMAL DISEASE**

11 **CENTER, DEPARTMENT OF AGRICULTURE.**

12 (a) *TRANSFER REQUIRED.*—In accordance with title
 13 VIII, the Secretary of Agriculture shall transfer to the Sec-
 14 retary of Homeland Security the Plum Island Animal Dis-
 15 ease Center of the Department of Agriculture, including the
 16 assets and liabilities of the Center.

17 (b) *CONTINUED DEPARTMENT OF AGRICULTURE AC-*
 18 *CESS.*—Upon the transfer of the Plum Island Animal Dis-
 19 ease Center, the Secretary of Homeland Security and the
 20 Secretary of Agriculture shall enter into an agreement to
 21 ensure Department of Agriculture access to the center for
 22 research, diagnostic, and other activities of the Department
 23 of Agriculture.

24 (c) *NOTIFICATION.*—At least 180 days before any
 25 change in the biosafety level at the facility described in sub-

1 *section (a), the President shall notify the Congress of the*
 2 *change and describe the reasons therefor. No such change*
 3 *may be made until at least 180 days after the completion*
 4 *of the transition period defined in section 801(2).*

5 ***TITLE IV—BORDER AND***
 6 ***TRANSPORTATION SECURITY***
 7 ***Subtitle A—General Provisions***

8 ***SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPOR-***
 9 ***TATION SECURITY.***

10 *The Secretary, acting through the Under Secretary for*
 11 *Border and Transportation Security, shall be responsible*
 12 *for the following:*

13 *(1) Preventing the entry of terrorists and the in-*
 14 *struments of terrorism into the United States.*

15 *(2) Securing the borders, territorial waters,*
 16 *ports, terminals, waterways, and air, land, and sea*
 17 *transportation systems of the United States, including*
 18 *managing and coordinating governmental activities*
 19 *at ports of entry.*

20 *(3) Carrying out the immigration enforcement*
 21 *functions vested by statute in, or performed by, the*
 22 *Commissioner of Immigration and Naturalization (or*
 23 *any officer, employee, or component of the Immigra-*
 24 *tion and Naturalization Service) immediately before*

1 *the date on which the transfer of functions specified*
2 *under section 411 takes effect.*

3 *(4) Establishing and administering rules, in ac-*
4 *cordance with section 403, governing the granting of*
5 *visas or other forms of permission, including parole,*
6 *to enter the United States to individuals who are not*
7 *a citizen or an alien lawfully admitted for permanent*
8 *residence in the United States.*

9 *(5) Except as provided in subtitle C, admin-*
10 *istering the customs laws of the United States.*

11 *(6) Conducting the inspection and related ad-*
12 *ministrative functions of the Department of Agri-*
13 *culture transferred to the Secretary of Homeland Se-*
14 *curity under section 404.*

15 *(7) In carrying out the foregoing responsibilities,*
16 *ensuring the speedy, orderly, and efficient flow of law-*
17 *ful traffic and commerce.*

18 **SEC. 402. FUNCTIONS TRANSFERRED.**

19 *In accordance with title VIII, there shall be transferred*
20 *to the Secretary the functions, personnel, assets, and obliga-*
21 *tions of the following:*

22 *(1) The United States Customs Service, except as*
23 *provided in subtitle C.*

24 *(2) The Coast Guard of the Department of*
25 *Transportation, which shall be maintained as a dis-*

1 *tinct entity within the Department, including the*
2 *functions of the Secretary of Transportation relating*
3 *thereto.*

4 *(3) The Transportation Security Administration*
5 *of the Department of Transportation, including the*
6 *functions of the Secretary of Transportation, and of*
7 *the Under Secretary of Transportation for Security,*
8 *relating thereto.*

9 *(4) The Federal Protective Service of the General*
10 *Services Administration, including the functions of*
11 *the Administrator of General Services relating there-*
12 *to.*

13 *(5) The Office of National Preparedness of the*
14 *Federal Emergency Management Agency, including*
15 *the functions of the Director of the Federal Emergency*
16 *Management Agency relating thereto.*

17 *(6) The Office for Domestic Preparedness of the*
18 *Office of Justice Programs of the Department of Jus-*
19 *tice, including the functions of the Attorney General*
20 *relating thereto.*

21 *(7) The National Domestic Preparedness Office*
22 *of the Federal Bureau of Investigation, including the*
23 *functions of the Attorney General relating thereto.*

1 (8) *The Domestic Emergency Support Teams of*
2 *the Department of Justice, including the functions of*
3 *the Attorney General relating thereto.*

4 **SEC. 403. VISA ISSUANCE.**

5 (a) *IN GENERAL.*—*Notwithstanding section 104(a) of*
6 *the Immigration and Nationality Act (8 U.S.C. 1104(a))*
7 *or any other provision of law, and except as provided in*
8 *subsection (b) of this section, the Secretary—*

9 (1) *shall be vested exclusively with all authorities*
10 *to issue regulations with respect to, administer, and*
11 *enforce the provisions of such Act, and of all other im-*
12 *migration and nationality laws, relating to the func-*
13 *tions of consular officers of the United States in con-*
14 *nection with the granting or refusal of visas, and*
15 *shall have the authority to refuse visas in accordance*
16 *with law and to develop programs of homeland secu-*
17 *rity training for consular officers (in addition to con-*
18 *sular training provided by the Secretary of State),*
19 *which authorities shall be exercised through the Sec-*
20 *retary of State, except that the Secretary shall not*
21 *have authority to alter or reverse the decision of a*
22 *consular officer to refuse a visa to an alien; and*

23 (2) *shall have authority to confer or impose upon*
24 *any officer or employee of the United States, with the*
25 *consent of the head of the executive agency under*

1 *whose jurisdiction such officer or employee is serving,*
 2 *any of the functions specified in paragraph (1).*

3 ***(b) AUTHORITY OF THE SECRETARY OF STATE.—***

4 ***(1) IN GENERAL.—****Notwithstanding subsection*
 5 *(a), the Secretary of State may direct a consular offi-*
 6 *cer to refuse a visa to an alien if the Secretary of*
 7 *State deems such refusal necessary or advisable in the*
 8 *foreign policy or security interests of the United*
 9 *States.*

10 ***(2) CONSTRUCTION REGARDING AUTHORITY.—***
 11 *Nothing in this section shall be construed as affecting*
 12 *the authorities of the Secretary of State under the fol-*
 13 *lowing provisions of law:*

14 ***(A) Section 101(a)(15)(A) of the Immigra-***
 15 *tion and Nationality Act (8 U.S.C.*
 16 *1101(a)(15)(A)).*

17 ***(B) Section 204(d)(2) of the Immigration***
 18 *and Nationality Act (8 U.S.C. 1154) (as it will*
 19 *take effect upon the entry into force of the Con-*
 20 *vention on Protection of Children and Coopera-*
 21 *tion in Respect to Inter-Country Adoption).*

22 ***(C) Section 212(a)(3)(B)(vi)(II) of the Im-***
 23 *migration and Nationality Act.*

1 (D) Section 212(a)(3)(C) of the Immigra-
2 tion and Nationality Act (8 U.S.C.
3 1182(a)(3)(C)).

4 (E) Section 212(a)(10)(C) of the Immigra-
5 tion and Nationality Act (8 U.S.C.
6 1182(a)(10)(C)).

7 (F) Section 219(a) of the Immigration and
8 Nationality Act (8 U.S.C. 1189(a)).

9 (G) Section 237(a)(4)(C) of the Immigra-
10 tion and Nationality Act (8 U.S.C.
11 1227(a)(4)(C)).

12 (H) Section 401 of the Cuban Liberty and
13 Democratic Solidarity (LIBERTAD) Act of
14 1996 (22 U.S.C. 6034; Public Law 104–114).

15 (I) Section 613 of the Departments of Com-
16 merce, Justice, and State, the Judiciary, and Re-
17 lated Agencies Appropriations Act, 1999 (as con-
18 tained in section 101(b) of division A of Public
19 Law 105–277) (Omnibus Consolidated and
20 Emergency Supplemental Appropriations Act,
21 1999; 112 Stat. 2681; H.R. 4328 (originally
22 H.R. 4276) as amended by section 617 of Public
23 Law 106–553).

24 (J) Section 801 of H.R. 3427, the Admiral
25 James W. Nance and Meg Donovan Foreign Re-

1 *lations Authorization Act, Fiscal Years 2000 and*
 2 *2001, as enacted by reference in Public Law*
 3 *106–113.*

4 *(K) Section 568 of the Foreign Operations,*
 5 *Export Financing, and Related Programs Ap-*
 6 *propriations Act, 2002 (Public Law 107–115).*

7 *(3) CONSTRUCTION REGARDING DELEGATION OF*
 8 *AUTHORITY.—Nothing in this section shall be con-*
 9 *strued to affect any delegation of authority to the Sec-*
 10 *retary of State by the President pursuant to any*
 11 *proclamation issued under section 212(f) of the Immi-*
 12 *gration and Nationality Act (8 U.S.C. 1182(f)).*

13 *(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOY-*
 14 *EES TO DIPLOMATIC AND CONSULAR POSTS.—*

15 *(1) IN GENERAL.—The Secretary is authorized to*
 16 *assign employees of the Department of Homeland Se-*
 17 *curity to any diplomatic and consular posts abroad*
 18 *to perform the following functions:*

19 *(A) Provide expert advice and training to*
 20 *consular officers regarding specific security*
 21 *threats relating to individual visa applications*
 22 *or classes of applications.*

23 *(B) Review any or all such applications*
 24 *prior to their adjudication, either on the initia-*
 25 *tive of the employee of the Department of Home-*

1 *land Security or upon request by a consular offi-*
2 *cer or other person charged with adjudicating*
3 *such applications.*

4 (C) *Conduct investigations with respect to*
5 *matters under the jurisdiction of the Secretary.*

6 (2) *PERMANENT ASSIGNMENT; PARTICIPATION IN*
7 *TERRORIST LOOKOUT COMMITTEE.—When appro-*
8 *priate, employees of the Department of Homeland Se-*
9 *curity assigned to perform functions described in*
10 *paragraph (1) may be assigned permanently to over-*
11 *seas diplomatic or consular posts with country-spe-*
12 *cific or regional responsibility. If the Secretary so di-*
13 *rects, any such employee, when present at an overseas*
14 *post, shall participate in the terrorist lookout com-*
15 *mittee established under section 304 of the Enhanced*
16 *Border Security and Visa Entry Reform Act of 2002*
17 *(8 U.S.C. 1733).*

18 (3) *TRAINING AND HIRING.—*

19 (A) *The Secretary shall ensure that any em-*
20 *ployees of the Department of Homeland Security*
21 *assigned to perform functions described in para-*
22 *graph (1) shall be provided all necessary train-*
23 *ing to enable them to carry out such functions,*
24 *including training in foreign languages, inter-*
25 *view techniques, fraud detection techniques, and*

1 *other skills required by such employees, in condi-*
2 *tions in the particular country where each em-*
3 *ployee is assigned, and in other appropriate*
4 *areas of study.*

5 *(B) The Secretary shall promulgate regula-*
6 *tions within 60 days of the enactment of this Act*
7 *establishing foreign language proficiency require-*
8 *ments for employees of the Department per-*
9 *forming the functions described in paragraph (1)*
10 *and providing that preference shall be given to*
11 *individuals who meet such requirements in hir-*
12 *ing employees for the performance of such func-*
13 *tions.*

14 *(C) The Secretary is authorized to use the*
15 *National Foreign Affairs Training Center, on a*
16 *reimbursable basis, to obtain the training de-*
17 *scribed in subparagraph (A).*

18 *(d) NO CREATION OF PRIVATE RIGHT OF ACTION.—*

19 *Nothing in this section shall be construed to create or au-*
20 *thorize a private right of action to challenge a decision of*
21 *a consular officer or other United States official or employee*
22 *to grant or deny a visa.*

23 *(e) STUDY REGARDING USE OF FOREIGN NATION-*

24 *ALS.—*

1 (1) *IN GENERAL.*—*The Secretary of Homeland*
2 *Security shall conduct a study of the role of foreign*
3 *nationals in the granting or refusal of visas and other*
4 *documents authorizing entry of aliens into the United*
5 *States. The study shall address the following:*

6 (A) *The proper role, if any, of foreign na-*
7 *tionals in the process of rendering decisions on*
8 *such grants and refusals.*

9 (B) *Any security concerns involving the em-*
10 *ployment of foreign nationals.*

11 (C) *Whether there are cost-effective alter-*
12 *natives to the use of foreign nationals.*

13 (2) *REPORT.*—*Not later than 1 year after the*
14 *date of the enactment of this Act, the Secretary shall*
15 *submit a report containing the findings of the study*
16 *conducted under paragraph (1) to the Committee on*
17 *the Judiciary, the Committee on International Rela-*
18 *tions, and the Committee on Government Reform of*
19 *the House of Representatives, and the Committee on*
20 *the Judiciary, the Committee on Foreign Relations,*
21 *and the Committee on Government Affairs of the Sen-*
22 *ate.*

23 (f) *REPORT.*—*Not later than 120 days after the date*
24 *of the enactment of this Act, the Director of the Office of*
25 *Science and Technology Policy shall submit to the Congress*

1 *a report on how the provisions of this section will affect*
 2 *procedures for the issuance of student visas.*

3 (g) *VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.*—
 4 *Notwithstanding any other provision of law, after the date*
 5 *of the enactment of this Act all third party screening, inter-*
 6 *view waiver, or other non-interview visa issuance programs*
 7 *in Saudi Arabia shall be terminated. On-site personnel of*
 8 *the Department of Homeland Security shall review all visa*
 9 *applications prior to adjudication. All visa applicants in*
 10 *Saudi Arabia shall be interviewed unless on-site personnel*
 11 *of the Department of Homeland Security determine, in*
 12 *writing and pursuant to written guidelines issued by the*
 13 *Secretary of Homeland Security, that the alien is unlikely*
 14 *to present a risk to homeland security. The Secretary of*
 15 *Homeland Security shall promulgate such guidelines not*
 16 *later than 30 days after the date of the enactment of this*
 17 *Act.*

18 **SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPEC-**
 19 **TION FUNCTIONS OF THE DEPARTMENT OF**
 20 **AGRICULTURE.**

21 (a) *TRANSFER OF AGRICULTURAL IMPORT AND ENTRY*
 22 *INSPECTION FUNCTIONS.*—*There shall be transferred to the*
 23 *Secretary of Homeland Security the functions of the Sec-*
 24 *retary of Agriculture relating to agricultural import and*

1 *entry inspection activities under the laws specified in sub-*
2 *section (b).*

3 (b) *COVERED ANIMAL AND PLANT PROTECTION*
4 *LAWS.—The laws referred to in subsection (a) are the fol-*
5 *lowing:*

6 (1) *The Act commonly known as the Virus-*
7 *Serum-Toxin Act (the eighth paragraph under the*
8 *heading “Bureau of Animal Industry” in the Act of*
9 *March 4, 1913; 21 U.S.C. 151 et seq.).*

10 (2) *Section 1 of the Act of August 31, 1922 (com-*
11 *monly known as the Honeybee Act; 7 U.S.C. 281).*

12 (3) *Title III of the Federal Seed Act (7 U.S.C.*
13 *1581 et seq.).*

14 (4) *The Plant Protection Act (7 U.S.C. 7701 et*
15 *seq.).*

16 (5) *The Animal Protection Act (subtitle E of title*
17 *X of Public Law 107–171; 7 U.S.C. 8301 et seq.).*

18 (6) *The Lacey Act Amendments of 1981 (16*
19 *U.S.C. 3371 et seq.).*

20 (7) *Section 11 of the Endangered Species Act of*
21 *1973 (16 U.S.C. 1540).*

22 (c) *EXCLUSION OF QUARANTINE ACTIVITIES.—For*
23 *purposes of this section, the term “functions” does not in-*
24 *clude any quarantine activities carried out under the laws*
25 *specified in subsection (b).*

1 (d) *EFFECT OF TRANSFER.*—

2 (1) *COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.*—*The authority transferred*
3 *pursuant to subsection (a) shall be exercised by the*
4 *Secretary of Homeland Security in accordance with*
5 *the regulations, policies, and procedures issued by the*
6 *Secretary of Agriculture regarding the administration*
7 *of the laws specified in subsection (b).*

9 (2) *RULEMAKING COORDINATION.*—*The Secretary*
10 *of Agriculture shall coordinate with the Secretary of*
11 *Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures*
12 *for administering the laws specified in subsection (b)*
13 *at the locations referred to in subsection (a).*

15 (3) *EFFECTIVE ADMINISTRATION.*—*The Secretary*
16 *of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and*
17 *guidelines as are necessary to ensure the effective use*
18 *of personnel of the Department of Homeland Security*
19 *to carry out the functions transferred pursuant to*
20 *subsection (a).*

22 (e) *TRANSFER AGREEMENT.*—

23 (1) *AGREEMENT REQUIRED; REVISION.*—*Before*
24 *the end of the transition period, as defined in section*
25 *801(2), the Secretary of Agriculture and the Secretary*

1 *of Homeland Security shall enter into an agreement*
2 *to effectuate the transfer of functions required by sub-*
3 *section (a). The Secretary of Agriculture and the Sec-*
4 *retary of Homeland Security may jointly revise the*
5 *agreement as necessary thereafter.*

6 (2) *REQUIRED TERMS.—The agreement required*
7 *by this subsection shall specifically address the fol-*
8 *lowing:*

9 (A) *The supervision by the Secretary of Ag-*
10 *riculture of the training of employees of the Sec-*
11 *retary of Homeland Security to carry out the*
12 *functions transferred pursuant to subsection (a).*

13 (B) *The transfer of funds to the Secretary*
14 *of Homeland Security under subsection (f).*

15 (3) *COOPERATION AND RECIPROCITY.—The Sec-*
16 *retary of Agriculture and the Secretary of Homeland*
17 *Security may include as part of the agreement the fol-*
18 *lowing:*

19 (A) *Authority for the Secretary of Home-*
20 *land Security to perform functions delegated to*
21 *the Animal and Plant Health Inspection Service*
22 *of the Department of Agriculture regarding the*
23 *protection of domestic livestock and plants, but*
24 *not transferred to the Secretary of Homeland Se-*
25 *curity pursuant to subsection (a).*

1 (B) *Authority for the Secretary of Agri-*
 2 *culture to use employees of the Department of*
 3 *Homeland Security to carry out authorities dele-*
 4 *gated to the Animal and Plant Health Inspec-*
 5 *tion Service regarding the protection of domestic*
 6 *livestock and plants.*

7 (f) *PERIODIC TRANSFER OF FUNDS TO DEPARTMENT*
 8 *OF HOMELAND SECURITY.—*

9 (1) *TRANSFER OF FUNDS.—Out of funds col-*
 10 *lected by fees authorized under sections 2508 and*
 11 *2509 of the Food, Agriculture, Conservation, and*
 12 *Trade Act of 1990 (21 U.S.C. 136, 136a), the Sec-*
 13 *retary of Agriculture shall transfer, from time to time*
 14 *in accordance with the agreement under subsection*
 15 *(e), to the Secretary of Homeland Security funds for*
 16 *activities carried out by the Secretary of Homeland*
 17 *Security for which such fees were collected.*

18 (2) *LIMITATION.—The proportion of fees collected*
 19 *pursuant to such sections that are transferred to the*
 20 *Secretary of Homeland Security under this subsection*
 21 *may not exceed the proportion of the costs incurred*
 22 *by the Secretary of Homeland Security to all costs in-*
 23 *curring to carry out activities funded by such fees.*

24 (g) *TRANSFER OF DEPARTMENT OF AGRICULTURE EM-*
 25 *PLOYEES.—During the transition period, the Secretary of*

1 *Agriculture shall transfer to the Secretary of Homeland Se-*
 2 *curity not more than 3,200 full-time equivalent positions*
 3 *of the Department of Agriculture.*

4 *(h) PROTECTION OF INSPECTION ANIMALS.—Title V of*
 5 *the Agricultural Risk Protection Act of 2000 (7 U.S.C.*
 6 *2279e, 2279f) is amended—*

7 *(1) in section 501(a)—*

8 *(A) by inserting “or the Department of*
 9 *Homeland Security” after “Department of Agri-*
 10 *culture”; and*

11 *(B) by inserting “or the Secretary of Home-*
 12 *land Security” after “Secretary of Agriculture”;*

13 *(2) by striking “Secretary” each place it appears*
 14 *(other than in sections 501(a) and 501(e)) and insert-*
 15 *ing “Secretary concerned”; and*

16 *(3) by adding at the end of section 501 the fol-*
 17 *lowing new subsection:*

18 *“(e) SECRETARY CONCERNED DEFINED.—In this title,*
 19 *the term ‘Secretary concerned’ means—*

20 *“(1) the Secretary of Agriculture, with respect to*
 21 *an animal used for purposes of official inspections by*
 22 *the Department of Agriculture; and*

23 *“(2) the Secretary of Homeland Security, with*
 24 *respect to an animal used for purposes of official in-*
 25 *spections by the Department of Homeland Security.”.*

1 **SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL**
2 **SERVICES.**

3 (a) *OPERATION, MAINTENANCE, AND PROTECTION OF*
4 *FEDERAL BUILDINGS AND GROUNDS.*—*Nothing in this Act*
5 *may be construed to affect the functions or authorities of*
6 *the Administrator of General Services with respect to the*
7 *operation, maintenance, and protection of buildings and*
8 *grounds owned or occupied by the Federal Government and*
9 *under the jurisdiction, custody, or control of the Adminis-*
10 *trator. Except for the law enforcement and related security*
11 *functions transferred under section 402(4), the Adminis-*
12 *trator shall retain all powers, functions, and authorities*
13 *vested in the Administrator under the Federal Property and*
14 *Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)*
15 *and other provisions of law that are necessary for the oper-*
16 *ation, maintenance, and protection of such buildings and*
17 *grounds.*

18 (b) *COLLECTION OF RENTS AND FEES; FEDERAL*
19 *BUILDINGS FUND.*—

20 (1) *STATUTORY CONSTRUCTION.*—*Nothing in this*
21 *Act may be construed—*

22 (A) *to direct the transfer of, or affect, the*
23 *authority of the Administrator of General Serv-*
24 *ices to collect rents and fees, including fees col-*
25 *lected for protective services; or*

1 (B) to authorize the Secretary or any other
 2 official in the Department to obligate amounts
 3 in the Federal Buildings Fund established by
 4 section 210(f) of the Federal Property and Ad-
 5 ministrative Services Act of 1949 (40 U.S.C.
 6 490(f)).

7 (2) *USE OF TRANSFERRED AMOUNTS.*—Any
 8 amounts transferred by the Administrator of General
 9 Services to the Secretary out of rents and fees col-
 10 lected by the Administrator shall be used by the Sec-
 11 retary solely for the protection of buildings or grounds
 12 owned or occupied by the Federal Government.

13 **SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY AD-**
 14 **MINISTRATION.**

15 (a) *CONSULTATION WITH FEDERAL AVIATION ADMIN-*
 16 *ISTRATION.*—The Secretary and other officials in the De-
 17 partment shall consult with the Administrator of the Fed-
 18 eral Aviation Administration before taking any action that
 19 might affect aviation safety, air carrier operations, aircraft
 20 airworthiness, or the use of airspace. The Secretary shall
 21 establish a liaison office within the Department for the pur-
 22 pose of consulting with the Administrator of the Federal
 23 Aviation Administration.

24 (b) *REPORT TO CONGRESS.*—Not later than 60 days
 25 after the date of enactment of this Act, the Secretary of

1 *Transportation shall transmit to Congress a report con-*
 2 *taining a plan for complying with the requirements of sec-*
 3 *tion 44901(d) of title 49, United States Code.*

4 *(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—*

5 *(1) GRANT OF AUTHORITY.—Nothing in this Act*
 6 *may be construed to vest in the Secretary or any*
 7 *other official in the Department any authority over*
 8 *transportation security that is not vested in the*
 9 *Under Secretary of Transportation for Security, or in*
 10 *the Secretary of Transportation under chapter 449 of*
 11 *title 49, United States Code, on the day before the*
 12 *date of enactment of this Act.*

13 *(2) OBLIGATION OF AIP FUNDS.—Nothing in this*
 14 *Act may be construed to authorize the Secretary or*
 15 *any other official in the Department to obligate*
 16 *amounts made available under section 48103 of title*
 17 *49, United States Code.*

18 **SEC. 407. PRESERVATION OF TRANSPORTATION SECURITY**

19 **ADMINISTRATION AS A DISTINCT ENTITY.**

20 *(a) IN GENERAL.—Notwithstanding any other provi-*
 21 *sion of this Act, and subject to subsection (b), the Transpor-*
 22 *tation Security Administration shall be maintained as a*
 23 *distinct entity within the Department under the Under Sec-*
 24 *retary for Border Transportation and Security.*

1 (b) *SUNSET.*—Subsection (a) shall cease to apply two
 2 years after the date of enactment of this Act.

3 **SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED**
 4 **THREATS TO PUBLIC TRANSPORTATION.**

5 On an annual basis, the Secretary, in consultation
 6 with the heads of other appropriate Federal departments
 7 and agencies, shall conduct an assessment of terrorist-re-
 8 lated threats to all forms of public transportation, including
 9 public gathering areas related to public transportation.

10 **SEC. 409. EXPLOSIVE DETECTION SYSTEMS.**

11 (a) *INSTALLATION OF SYSTEMS.*—Section 44901(d) of
 12 title 49, United States Code, is amended by adding at the
 13 end the following:

14 “(2) *MODIFICATION OF AIRPORT TERMINAL*
 15 *BUILDINGS TO ACCOMMODATE EXPLOSIVE DETECTION*
 16 *SYSTEMS.*—

17 “(A) *NOTIFICATION OF AIRPORTS.*—Not
 18 later than October 1, 2002, the Under Secretary
 19 shall notify the owner or operator of each United
 20 States airport described in section 44903(c) of
 21 the number and type of explosive detection sys-
 22 tems that will be required to be deployed at the
 23 airport in order to screen all checked baggage by
 24 explosive detection systems without imposing un-

1 *reasonable delays on the passengers using the*
2 *airport.*

3 “(B) *ASSESSMENTS OF AIRPORT TERMINAL*
4 *BUILDINGS.—If the owner or operator of a*
5 *United States airport described in section*
6 *44903(c) determines that the airport will not be*
7 *able to make the modifications to the airport’s*
8 *terminal buildings that are necessary to accom-*
9 *modate the explosive detection systems required*
10 *under subparagraph (A) in a cost-effective man-*
11 *ner on or before December 31, 2002, the owner*
12 *or operator shall provide notice of that deter-*
13 *mination to the Under Secretary not later than*
14 *November 1, 2002.*

15 “(C) *PLANS FOR MAKING MODIFICATIONS TO*
16 *AIRPORT TERMINAL BUILDINGS.—*

17 “(i) *IN GENERAL.—If the owner or op-*
18 *erator of an airport provides notice to the*
19 *Under Secretary under subparagraph (B),*
20 *the Under Secretary, in consultation with*
21 *the owner or operator, shall develop, not*
22 *later than December 1, 2002, a plan for*
23 *making necessary modifications to the air-*
24 *port’s terminal buildings so as to deploy*

1 *and fully utilize explosive detection systems*
2 *to screen all checked baggage.*

3 “(ii) *DEADLINE.—A plan developed*
4 *under this subparagraph shall include a*
5 *date for executing the plan. All such plans*
6 *shall be executed as expeditiously as prac-*
7 *ticable but not later than December 31,*
8 *2003.*

9 “(iii) *TRANSMISSION OF PLANS TO*
10 *CONGRESS.—On the date of completion of a*
11 *plan under this subparagraph, the Under*
12 *Secretary shall transmit a copy of the plan*
13 *to Congress. For security purposes, informa-*
14 *tion contained in the plan shall not be dis-*
15 *closed to the public.*

16 “(D) *REQUIREMENTS FOR PLANS.—A plan*
17 *developed and published under subparagraph*
18 *(C), shall provide for, to the maximum extent*
19 *practicable—*

20 “(i) *the deployment of explosive detec-*
21 *tion systems in the baggage sorting area or*
22 *other non-public area rather than the lobby*
23 *of an airport terminal building; and*

24 “(ii) *the deployment of state of the art*
25 *explosive detection systems that have high*

1 *throughput, low false alarm rates, and high*
 2 *reliability without reducing detection rates.*

3 “(E) *USE OF SCREENING METHODS OTHER*
 4 *THAN EDS.*—*Notwithstanding the deadline in*
 5 *paragraph (1)(A), after December 31, 2002, if*
 6 *explosive detection systems are not screening all*
 7 *checked baggage at a United States airport de-*
 8 *scribed in section 44903(c), such baggage shall be*
 9 *screened by the methods described in subsection*
 10 *(e) until such time as all checked baggage is*
 11 *screened by explosive detection systems at the*
 12 *airport.*

13 “(3) *PURCHASE OF EXPLOSIVE DETECTION SYS-*
 14 *TEMS.*—*Any explosive detection system required to be*
 15 *purchased under paragraph (2)(A) shall be purchased*
 16 *by the Under Secretary.*

17 “(4) *EXPLOSIVE DETECTION SYSTEM DEFINED.*—
 18 *In this subsection, the term ‘explosive detection sys-*
 19 *tem’ means a device, or combination of devices, that*
 20 *can detect different types of explosives.”.*

21 (b) *CORRECTION OF REFERENCE.*—*Section 44901(e) of*
 22 *title 49, United States Code, is amended by striking*
 23 *“(b)(1)(A)” and inserting “(d)(1)(A)”.*

1 **SEC. 410. TRANSPORTATION SECURITY.**

2 (a) TRANSPORTATION SECURITY OVERSIGHT
3 BOARD.—

4 (1) *ESTABLISHMENT.*—Section 115(a) of title 49,
5 United States Code, is amended by striking “Depart-
6 ment of Transportation” and inserting “Department
7 of Homeland Security”.

8 (2) *MEMBERSHIP.*—Section 115(b)(1) of title 49,
9 United States Code, is amended—

10 (A) by striking subparagraph (G);

11 (B) by redesignating subparagraphs (A)
12 through (F) as subparagraphs (B) through (G),
13 respectively; and

14 (C) by inserting before subparagraph (B)
15 (as so redesignated) the following:

16 “(A) The Secretary of Homeland Security,
17 or the Secretary’s designee.”.

18 (3) *CHAIRPERSON.*—Section 115(b)(2) of title 49,
19 United States Code, is amended by striking “Sec-
20 retary of Transportation” and inserting “Secretary of
21 Homeland Security”.

22 (b) *APPROVAL OF AIP GRANT APPLICATIONS FOR SE-*
23 *URITY ACTIVITIES.*—Section 47106 of title 49, United
24 States Code, is amended by adding at the end the following:

25 “(g) *CONSULTATION WITH SECRETARY OF HOMELAND*
26 *SECURITY.*—The Secretary shall consult with the Secretary

1 of Homeland Security before approving an application
 2 under this subchapter for an airport development project
 3 grant for activities described in section 47102(3)(B)(ii) (re-
 4 lating to security equipment) or section 47102(3)(B)(x) (re-
 5 lating to installation of bulk explosive detection systems).”.

6 ***Subtitle B—Immigration and***
 7 ***Nationality Functions***

8 ***CHAPTER 1—IMMIGRATION***
 9 ***ENFORCEMENT***

10 ***SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY***
 11 ***FOR BORDER AND TRANSPORTATION SECU-***
 12 ***RITY.***

13 *In accordance with title VIII, there shall be transferred*
 14 *from the Commissioner of Immigration and Naturalization*
 15 *to the Under Secretary for Border and Transportation Se-*
 16 *curity all functions performed under the following pro-*
 17 *grams, and all personnel, assets, and liabilities pertaining*
 18 *to such programs, immediately before such transfer occurs:*

- 19 (1) *The Border Patrol program.*
 20 (2) *The detention and removal program.*
 21 (3) *The intelligence program.*
 22 (4) *The investigations program.*
 23 (5) *The inspections program.*

1 **SEC. 412. ESTABLISHMENT OF BUREAU OF BORDER SECU-**
2 **RITY.**

3 (a) *ESTABLISHMENT OF BUREAU.*—

4 (1) *IN GENERAL.*—*There is established in the De-*
5 *partment of Homeland Security a bureau to be*
6 *known as the “Bureau of Border Security”.*

7 (2) *ASSISTANT SECRETARY.*—*The head of the*
8 *Bureau of Border Security shall be the Assistant Sec-*
9 *retary of the Bureau of Border Security, who—*

10 (A) *shall report directly to the Under Sec-*
11 *retary for Border and Transportation Security;*
12 *and*

13 (B) *shall have a minimum of 10 years pro-*
14 *fessional experience in law enforcement, at least*
15 *5 of which shall have been years of service in a*
16 *managerial capacity.*

17 (3) *FUNCTIONS.*—*The Assistant Secretary of the*
18 *Bureau of Border Security—*

19 (A) *shall establish the policies for per-*
20 *forming such functions as are—*

21 (i) *transferred to the Under Secretary*
22 *for Border and Transportation Security by*
23 *section 411 and delegated to the Assistant*
24 *Secretary by the Under Secretary for Bor-*
25 *der and Transportation Security; or*

1 (ii) otherwise vested in the Assistant
2 Secretary by law;

3 (B) shall oversee the administration of such
4 policies; and

5 (C) shall advise the Under Secretary for
6 Border and Transportation Security with respect
7 to any policy or operation of the Bureau of Bor-
8 der Security that may affect the Bureau of Citi-
9 zenship and Immigration Services of the Depart-
10 ment of Justice established under chapter 2, in-
11 cluding potentially conflicting policies or oper-
12 ations.

13 (4) *PROGRAM TO COLLECT INFORMATION RELAT-*
14 *ING TO FOREIGN STUDENTS.*—*The Assistant Secretary*
15 *of the Bureau of Border Security shall be responsible*
16 *for administering the program to collect information*
17 *relating to nonimmigrant foreign students and other*
18 *exchange program participants described in section*
19 *641 of the Illegal Immigration Reform and Immi-*
20 *grant Responsibility Act of 1996 (8 U.S.C. 1372), in-*
21 *cluding the Student and Exchange Visitor Informa-*
22 *tion System established under that section, and shall*
23 *use such information to carry out the enforcement*
24 *functions of the Bureau.*

25 (5) *MANAGERIAL ROTATION PROGRAM.*—

1 (A) *IN GENERAL.*—Not later than 1 year
2 after the date on which the transfer of functions
3 specified under section 411 takes effect, the As-
4 sistant Secretary of the Bureau of Border Secu-
5 rity shall design and implement a managerial
6 rotation program under which employees of such
7 bureau holding positions involving supervisory
8 or managerial responsibility and classified, in
9 accordance with chapter 51 of title 5, United
10 States Code, as a GS-14 or above, shall, as a
11 condition on further promotion—

12 (i) gain some experience in all the
13 major functions performed by such bureau;
14 and

15 (ii) work in at least one local office of
16 such bureau.

17 (B) *REPORT.*—Not later than 2 years after
18 the date on which the transfer of functions speci-
19 fied under section 411 takes effect, the Secretary
20 shall submit a report to the Congress on the im-
21 plementation of such program.

22 (b) *CHIEF OF POLICY AND STRATEGY.*—

23 (1) *IN GENERAL.*—There shall be a position of
24 Chief of Policy and Strategy for the Bureau of Border
25 Security.

1 (2) *FUNCTIONS.*—*In consultation with Bureau of*
 2 *Border Security personnel in local offices, the Chief of*
 3 *Policy and Strategy shall be responsible for—*

4 (A) *establishing national immigration en-*
 5 *forcement policies and priorities;*

6 (B) *performing policy research and analysis*
 7 *on immigration enforcement issues; and*

8 (C) *coordinating immigration policy issues*
 9 *with the Chief of Policy and Strategy for the Bu-*
 10 *reau of Citizenship and Immigration Services of*
 11 *the Department of Justice (established under*
 12 *chapter 2), and the Assistant Attorney General*
 13 *for Citizenship and Immigration Services, as ap-*
 14 *propriate.*

15 (c) *CITIZENSHIP AND IMMIGRATION SERVICES LIAI-*
 16 *SON.*—

17 (1) *IN GENERAL.*—*There shall be a position of*
 18 *Citizenship and Immigration Services Liaison for the*
 19 *Bureau of Border Security.*

20 (2) *FUNCTIONS.*—*The Citizenship and Immigra-*
 21 *tion Services Liaison shall be responsible for the ap-*
 22 *propriate allocation and coordination of resources in-*
 23 *volved in supporting shared support functions for the*
 24 *Bureau of Citizenship and Immigration Services of*

1 *the Department of Justice (established under chapter*
2 *2) and the Bureau of Border Security, including—*

3 *(A) information resources management, in-*
4 *cluding computer databases and information*
5 *technology;*

6 *(B) records and file management; and*

7 *(C) forms management.*

8 **SEC. 413. PROFESSIONAL RESPONSIBILITY AND QUALITY**
9 **REVIEW.**

10 *The Under Secretary for Border and Transportation*
11 *Security shall be responsible for—*

12 *(1) conducting investigations of noncriminal al-*
13 *legations of misconduct, corruption, and fraud involv-*
14 *ing any employee of the Bureau of Border Security*
15 *that are not subject to investigation by the Inspector*
16 *General for the Department;*

17 *(2) inspecting the operations of the Bureau of*
18 *Border Security and providing assessments of the*
19 *quality of the operations of such bureau as a whole*
20 *and each of its components; and*

21 *(3) providing an analysis of the management of*
22 *the Bureau of Border Security.*

23 **SEC. 414. EMPLOYEE DISCIPLINE.**

24 *The Under Secretary for Border and Transportation*
25 *Security may, notwithstanding any other provision of law,*

1 *impose disciplinary action, including termination of em-*
 2 *ployment, pursuant to policies and procedures applicable*
 3 *to employees of the Federal Bureau of Investigation, on any*
 4 *employee of the Bureau of Border Security who willfully*
 5 *deceives the Congress or agency leadership on any matter.*

6 **SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNC-**
 7 **TIONS.**

8 (a) *IN GENERAL.*—*The Secretary, not later than 1*
 9 *year after being sworn into office, shall submit to the Com-*
 10 *mittees on Appropriations and the Judiciary of the United*
 11 *States House of Representatives and of the Senate a report*
 12 *with a plan detailing how the Bureau of Border Security,*
 13 *after the transfer of functions specified under section 411*
 14 *takes effect, will enforce comprehensively, effectively, and*
 15 *fairly all the enforcement provisions of the Immigration*
 16 *and Nationality Act (8 U.S.C. 1101 et seq.) relating to such*
 17 *functions.*

18 (b) *CONSULTATION.*—*In carrying out subsection (a),*
 19 *the Secretary of Homeland Security shall consult with the*
 20 *Attorney General, the Secretary of State, the Assistant At-*
 21 *torney General for Citizenship and Immigration Services,*
 22 *the Director of the Federal Bureau of Investigation, the Sec-*
 23 *retary of the Treasury, the Secretary of Labor, the Commis-*
 24 *sioner of Social Security, the Director of the Executive Of-*
 25 *fice for Immigration Review, and the heads of State and*

1 *local law enforcement agencies to determine how to most*
 2 *effectively conduct enforcement operations.*

3 **CHAPTER 2—CITIZENSHIP AND**
 4 **IMMIGRATION SERVICES**

5 **Subchapter A—Transfers of Functions**

6 **SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP**
 7 **AND IMMIGRATION SERVICES.**

8 (a) *ESTABLISHMENT OF BUREAU.—*

9 (1) *IN GENERAL.—There is established in the De-*
 10 *partment of Justice a bureau to be known as the “Bu-*
 11 *reau of Citizenship and Immigration Services”.*

12 (2) *ASSISTANT ATTORNEY GENERAL.—The head*
 13 *of the Bureau of Citizenship and Immigration Serv-*
 14 *ices shall be the Assistant Attorney General for Citi-*
 15 *zenship and Immigration Services, who—*

16 (A) *shall report directly to the Deputy At-*
 17 *torney General; and*

18 (B) *shall have a minimum of 10 years pro-*
 19 *fessional experience in the rendering of adjudica-*
 20 *tions on the provision of government benefits or*
 21 *services, at least 5 of which shall have been years*
 22 *of service in a managerial capacity or in a posi-*
 23 *tion affording comparable management experi-*
 24 *ence.*

1 (3) *FUNCTIONS.*—*The Assistant Attorney Gen-*
2 *eral for Citizenship and Immigration Services—*

3 (A) *shall establish the policies for per-*
4 *forming such functions as are transferred to the*
5 *Assistant Attorney General by this section or this*
6 *Act or otherwise vested in the Assistant Attorney*
7 *General by law;*

8 (B) *shall oversee the administration of such*
9 *policies;*

10 (C) *shall advise the Deputy Attorney Gen-*
11 *eral with respect to any policy or operation of*
12 *the Bureau of Citizenship and Immigration*
13 *Services that may affect the Bureau of Border*
14 *Security of the Department of Homeland Secu-*
15 *rity, including potentially conflicting policies or*
16 *operations;*

17 (D) *shall meet regularly with the Ombuds-*
18 *man described in section 422 to correct serious*
19 *service problems identified by the Ombudsman;*
20 *and*

21 (E) *shall establish procedures requiring a*
22 *formal response to any recommendations sub-*
23 *mitted in the Ombudsman's annual report to the*
24 *Congress within 3 months after its submission to*
25 *the Congress.*

1 (4) *MANAGERIAL ROTATION PROGRAM.*—

2 (A) *IN GENERAL.*—Not later than 1 year
3 after the effective date specified in section 427,
4 the Assistant Attorney General for Citizenship
5 and Immigration Services shall design and im-
6 plement a managerial rotation program under
7 which employees of such bureau holding positions
8 involving supervisory or managerial responsi-
9 bility and classified, in accordance with chapter
10 51 of title 5, United States Code, as a GS–14 or
11 above, shall, as a condition on further
12 promotion—

13 (i) gain some experience in all the
14 major functions performed by such bureau;
15 and

16 (ii) work in at least one field office
17 and one service center of such bureau.

18 (B) *REPORT.*—Not later than 2 years after
19 the effective date specified in section 427, the At-
20 torney General shall submit a report to the Con-
21 gress on the implementation of such program.

22 (5) *PILOT INITIATIVES FOR BACKLOG ELIMI-*
23 *NATION.*—The Assistant Attorney General for Citizen-
24 ship and Immigration Services is authorized to im-
25 plement innovative pilot initiatives to eliminate any

1 *remaining backlog in the processing of immigration*
2 *benefit applications, and to prevent any backlog in*
3 *the processing of such applications from recurring, in*
4 *accordance with section 204(a) of the Immigration*
5 *Services and Infrastructure Improvements Act of*
6 *2000 (8 U.S.C. 1573(a)). Such initiatives may in-*
7 *clude measures such as increasing personnel, transfer-*
8 *ring personnel to focus on areas with the largest po-*
9 *tential for backlog, and streamlining paperwork.*

10 *(b) TRANSFER OF FUNCTIONS FROM COMMIS-*
11 *SIONER.—There are transferred from the Commissioner of*
12 *Immigration and Naturalization to the Assistant Attorney*
13 *General for Citizenship and Immigration Services the fol-*
14 *lowing functions, and all personnel, infrastructure, and*
15 *funding provided to the Commissioner in support of such*
16 *functions immediately before the effective date specified in*
17 *section 427:*

18 *(1) Adjudications of immigrant visa petitions.*

19 *(2) Adjudications of naturalization petitions.*

20 *(3) Adjudications of asylum and refugee applica-*
21 *tions.*

22 *(4) Adjudications performed at service centers.*

23 *(5) All other adjudications performed by the Im-*
24 *migration and Naturalization Service immediately*
25 *before the effective date specified in section 427.*

1 (c) *CHIEF OF POLICY AND STRATEGY.*—

2 (1) *IN GENERAL.*—*There shall be a position of*
3 *Chief of Policy and Strategy for the Bureau of Citi-*
4 *zenship and Immigration Services.*

5 (2) *FUNCTIONS.*—*In consultation with Bureau of*
6 *Citizenship and Immigration Services personnel in*
7 *field offices, the Chief of Policy and Strategy shall be*
8 *responsible for—*

9 (A) *establishing national immigration serv-*
10 *ices policies and priorities;*

11 (B) *performing policy research and analysis*
12 *on immigration services issues; and*

13 (C) *coordinating immigration policy issues*
14 *with the Chief of Policy and Strategy for the Bu-*
15 *reau of Border Security of the Department of*
16 *Homeland Security.*

17 (d) *GENERAL COUNSEL.*—

18 (1) *IN GENERAL.*—*There shall be a position of*
19 *General Counsel for the Bureau of Citizenship and*
20 *Immigration Services.*

21 (2) *FUNCTIONS.*—*The General Counsel shall*
22 *serve as the principal legal advisor to the Assistant*
23 *Attorney General for Citizenship and Immigration*
24 *Services. The General Counsel shall be responsible*
25 *for—*

1 (A) providing specialized legal advice, opin-
2 ions, determinations, regulations, and any other
3 assistance to the Assistant Attorney General for
4 Citizenship and Immigration Services with re-
5 spect to legal matters affecting the Bureau of
6 Citizenship and Immigration Services; and

7 (B) representing the Bureau of Citizenship
8 and Immigration Services in visa petition ap-
9 peal proceedings before the Executive Office for
10 Immigration Review and in other legal or ad-
11 ministrative proceedings involving immigration
12 services issues.

13 (e) CHIEF BUDGET OFFICER.—

14 (1) IN GENERAL.—There shall be a position of
15 Chief Budget Officer for the Bureau of Citizenship
16 and Immigration Services.

17 (2) FUNCTIONS.—

18 (A) IN GENERAL.—The Chief Budget Officer
19 shall be responsible for—

20 (i) formulating and executing the
21 budget of the Bureau of Citizenship and Im-
22 migration Services;

23 (ii) financial management of the Bu-
24 reau of Citizenship and Immigration Serv-
25 ices; and

1 (iii) collecting all payments, fines, and
2 other debts for the Bureau of Citizenship
3 and Immigration Services.

4 (3) *AUTHORITY AND FUNCTIONS OF AGENCY*
5 *CHIEF FINANCIAL OFFICERS.*—*The Chief Budget Offi-*
6 *cer for the Bureau of Citizenship and Immigration*
7 *Services shall have the authorities and functions de-*
8 *scribed in section 902 of title 31, United States Code,*
9 *in relation to financial activities of such bureau.*

10 (f) *CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL,*
11 *AND PUBLIC AFFAIRS.*—

12 (1) *IN GENERAL.*—*There shall be a position of*
13 *Chief of Congressional, Intergovernmental, and Public*
14 *Affairs for the Bureau of Citizenship and Immigra-*
15 *tion Services.*

16 (2) *FUNCTIONS.*—*The Chief of Congressional,*
17 *Intergovernmental, and Public Affairs shall be re-*
18 *sponsible for—*

19 (A) *providing information relating to im-*
20 *migration services to the Congress, including in-*
21 *formation on specific cases relating to immigra-*
22 *tion services issues;*

23 (B) *serving as a liaison with other Federal*
24 *agencies on immigration services issues; and*

1 (C) responding to inquiries from the media
2 and the general public on immigration services
3 issues.

4 (g) *BORDER SECURITY LIAISON.*—

5 (1) *IN GENERAL.*—There shall be a position of
6 Border Security Liaison for the Bureau of Citizen-
7 ship and Immigration Services.

8 (2) *FUNCTIONS.*—The Border Security Liaison
9 shall be responsible for the appropriate allocation and
10 coordination of resources involved in supporting
11 shared support functions for the Bureau of Border Se-
12 curity of the Department of Homeland Security and
13 the Bureau of Citizenship and Immigration Services,
14 including—

15 (A) information resources management, in-
16 cluding computer databases and information
17 technology;

18 (B) records and file management; and

19 (C) forms management.

20 (h) *CHIEF OF OFFICE OF CITIZENSHIP.*—

21 (1) *IN GENERAL.*—There shall be a position of
22 Chief of the Office of Citizenship for the Bureau of
23 Citizenship and Immigration Services.

24 (2) *FUNCTIONS.*—The Chief of the Office of Citi-
25 zenship for the Bureau of Citizenship and Immigra-

8 (a) *IN GENERAL.*—Within the Department of Justice,
9 there shall be a position of Citizenship and Immigration
10 Services Ombudsman (in this section referred to as the
11 “Ombudsman”). The Ombudsman shall report directly to
12 the Deputy Attorney General. The Ombudsman shall have
13 a background in customer service as well as immigration
14 law.

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in
the administrative practices of the Bureau of Citizen-

1 *ship and Immigration Services to mitigate problems*
2 *identified under paragraph (2); and*

3 *(4) to identify potential legislative changes that*
4 *may be appropriate to mitigate such problems.*

5 *(c) ANNUAL REPORTS.—*

6 *(1) OBJECTIVES.—Not later than June 30 of*
7 *each calendar year, the Ombudsman shall report to*
8 *the Committee on the Judiciary of the United States*
9 *House of Representatives and the Senate on the objec-*
10 *tives of the Office of the Ombudsman for the fiscal*
11 *year beginning in such calendar year. Any such re-*
12 *port shall contain full and substantive analysis, in*
13 *addition to statistical information, and—*

14 *(A) shall identify the initiatives the Office*
15 *of the Ombudsman has taken on improving serv-*
16 *ices and responsiveness of the Bureau of Citizen-*
17 *ship and Immigration Services;*

18 *(B) shall contain a summary of the most*
19 *pervasive and serious problems encountered by*
20 *individuals and employers, including a descrip-*
21 *tion of the nature of such problems;*

22 *(C) shall contain an inventory of the items*
23 *described in subparagraphs (A) and (B) for*
24 *which action has been taken and the result of*
25 *such action;*

1 (D) shall contain an inventory of the items
2 described in subparagraphs (A) and (B) for
3 which action remains to be completed and the
4 period during which each item has remained on
5 such inventory;

6 (E) shall contain an inventory of the items
7 described in subparagraphs (A) and (B) for
8 which no action has been taken, the period dur-
9 ing which each item has remained on such in-
10 ventory, the reasons for the inaction, and shall
11 identify any official of the Bureau of Citizenship
12 and Immigration Services who is responsible for
13 such inaction;

14 (F) shall contain recommendations for such
15 administrative and legislative action as may be
16 appropriate to resolve problems encountered by
17 individuals and employers, including problems
18 created by excessive backlogs in the adjudication
19 and processing of immigration benefit petitions
20 and applications; and

21 (G) shall include such other information as
22 the Ombudsman may deem advisable.

23 (2) *REPORT TO BE SUBMITTED DIRECTLY.*—

24 Each report required under this subsection shall be
25 provided directly to the committees described in para-

1 *graph (1) without any prior review or comment from*
2 *the Attorney General, Deputy Attorney General, As-*
3 *stant Attorney General for Citizenship and Immig-*
4 *ration Services, or any other officer or employee of*
5 *the Department of Justice or the Office of Manage-*
6 *ment and Budget.*

7 *(d) OTHER RESPONSIBILITIES.—The Ombudsman—*

8 *(1) shall monitor the coverage and geographic al-*
9 *location of local offices of the Ombudsman;*

10 *(2) shall develop guidance to be distributed to all*
11 *officers and employees of the Bureau of Citizenship*
12 *and Immigration Services outlining the criteria for*
13 *referral of inquiries to local offices of the Ombuds-*
14 *man;*

15 *(3) shall ensure that the local telephone number*
16 *for each local office of the Ombudsman is published*
17 *and available to individuals and employers served by*
18 *the office; and*

19 *(4) shall meet regularly with the Assistant Attor-*
20 *ney General for Citizenship and Immigration Serv-*
21 *ices to identify serious service problems and to present*
22 *recommendations for such administrative action as*
23 *may be appropriate to resolve problems encountered*
24 *by individuals and employers.*

25 *(e) PERSONNEL ACTIONS.—*

1 (1) *IN GENERAL.*—*The Ombudsman shall have*
 2 *the responsibility and authority—*

3 (A) *to appoint local ombudsmen and make*
 4 *available at least 1 such ombudsman for each*
 5 *State; and*

6 (B) *to evaluate and take personnel actions*
 7 *(including dismissal) with respect to any em-*
 8 *ployee of any local office of the Ombudsman.*

9 (2) *CONSULTATION.*—*The Ombudsman may con-*
 10 *sult with the appropriate supervisory personnel of the*
 11 *Bureau of Citizenship and Immigration Services in*
 12 *carrying out the Ombudsman’s responsibilities under*
 13 *this subsection.*

14 (f) *RESPONSIBILITIES OF BUREAU OF CITIZENSHIP*
 15 *AND IMMIGRATION SERVICES.*—*The Assistant Attorney*
 16 *General for Citizenship and Immigration Services shall es-*
 17 *tablish procedures requiring a formal response to all rec-*
 18 *ommendations submitted to such Assistant Attorney Gen-*
 19 *eral by the Ombudsman within 3 months after submission*
 20 *to such director.*

21 (g) *OPERATION OF LOCAL OFFICES.*—

22 (1) *IN GENERAL.*—*Each local ombudsman—*

23 (A) *shall report to the Ombudsman or the*
 24 *delegate thereof;*

1 (B) may consult with the appropriate su-
2 pervisory personnel of the Bureau of Citizenship
3 and Immigration Services regarding the daily
4 operation of the local office of such ombudsman;

5 (C) shall, at the initial meeting with any
6 individual or employer seeking the assistance of
7 such local office, notify such individual or em-
8 ployer that the local offices of the Ombudsman
9 operate independently of any other component of
10 the Department of Justice and report directly to
11 the Congress through the Ombudsman; and

12 (D) at the local ombudsman's discretion,
13 may determine not to disclose to the Bureau of
14 Citizenship and Immigration Services contact
15 with, or information provided by, such indi-
16 vidual or employer.

17 (2) MAINTENANCE OF INDEPENDENT COMMU-
18 NICATIONS.—Each local office of the Ombudsman
19 shall maintain a phone, facsimile, and other means
20 of electronic communication access, and a post office
21 address, that is separate from those maintained by
22 the Bureau of Citizenship and Immigration Services,
23 or any component of the Bureau of Citizenship and
24 Immigration Services.

1 **SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY**
2 **REVIEW.**

3 (a) *IN GENERAL.*—*The Assistant Attorney General for*
4 *Citizenship and Immigration Services shall be responsible*
5 *for—*

6 (1) *conducting investigations of noncriminal al-*
7 *legations of misconduct, corruption, and fraud involv-*
8 *ing any employee of the Bureau of Citizenship and*
9 *Immigration Services that are not subject to inves-*
10 *tigation by the Department of Justice Office of the In-*
11 *spector General;*

12 (2) *inspecting the operations of the Bureau of*
13 *Citizenship and Immigration Services and providing*
14 *assessments of the quality of the operations of such*
15 *bureau as a whole and each of its components; and*

16 (3) *providing an analysis of the management of*
17 *the Bureau of Citizenship and Immigration Services.*

18 (b) *SPECIAL CONSIDERATIONS.*—*In providing assess-*
19 *ments in accordance with subsection (a)(2) with respect to*
20 *a decision of the Bureau of Citizenship and Immigration*
21 *Services, or any of its components, consideration shall be*
22 *given to—*

23 (1) *the accuracy of the findings of fact and con-*
24 *clusions of law used in rendering the decision;*

25 (2) *any fraud or misrepresentation associated*
26 *with the decision; and*

1 (3) *the efficiency with which the decision was*
 2 *rendered.*

3 **SEC. 424. EMPLOYEE DISCIPLINE.**

4 *The Assistant Attorney General for Citizenship and*
 5 *Immigration Services may, notwithstanding any other pro-*
 6 *vision of law, impose disciplinary action, including termi-*
 7 *nation of employment, pursuant to policies and procedures*
 8 *applicable to employees of the Federal Bureau of Investiga-*
 9 *tion, on any employee of the Bureau of Citizenship and Im-*
 10 *migration Services who willfully deceives the Congress or*
 11 *agency leadership on any matter.*

12 **SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BU-**
 13 **REAU OF JUSTICE STATISTICS.**

14 (a) *IN GENERAL.*—*Part C of title I of the Omnibus*
 15 *Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731*
 16 *et seq.) is amended by adding at the end the following:*

17 “OFFICE OF IMMIGRATION STATISTICS

18 “SEC. 305. (a) *There is established within the Bureau*
 19 *of Justice Statistics of the Department of Justice an Office*
 20 *of Immigration Statistics (in this section referred to as the*
 21 *‘Office’), which shall be headed by a Director who shall be*
 22 *appointed by the Attorney General and who shall report*
 23 *to the Director of Justice Statistics.*

24 “(b) *The Director of the Office shall be responsible for*
 25 *the following:*

1 “(1) *Maintenance of all immigration statistical*
2 *information of the Bureau of Citizenship and Immi-*
3 *gration Services and the Executive Office for Immi-*
4 *gration Review. Such statistical information shall in-*
5 *clude information and statistics of the type contained*
6 *in the publication entitled ‘Statistical Yearbook of the*
7 *Immigration and Naturalization Service’ prepared by*
8 *the Immigration and Naturalization Service (as in*
9 *effect on the day prior to the effective date specified*
10 *in section 427 of the Homeland Security Act of 2002),*
11 *including region-by-region statistics on the aggregate*
12 *number of applications and petitions filed by an*
13 *alien (or filed on behalf of an alien) and denied by*
14 *such offices and bureaus, and the reasons for such de-*
15 *nials, disaggregated by category of denial and appli-*
16 *cation or petition type.*

17 “(2) *Establishment of standards of reliability*
18 *and validity for immigration statistics collected by*
19 *the Bureau of Citizenship and Immigration Services*
20 *and the Executive Office for Immigration Review.*

21 “(c) *The Bureau of Citizenship and Immigration Serv-*
22 *ices and the Executive Office for Immigration Review shall*
23 *provide statistical information to the Office of Immigration*
24 *Statistics from the operational data systems controlled by*
25 *the Bureau of Citizenship and Immigration Services and*

1 *the Executive Office for Immigration Review, respectively,*
 2 *for the purpose of meeting the responsibilities of the Direc-*
 3 *tor.”.*

4 (b) *TRANSFER OF FUNCTIONS.*—*There are transferred*
 5 *to the Office of Immigration Statistics established under*
 6 *section 305 of the Omnibus Crime Control and Safe Streets*
 7 *Act of 1968, as added by subsection (a), the functions per-*
 8 *formed immediately before such transfer occurs by the Sta-*
 9 *tistics Branch of the Office of Policy and Planning of the*
 10 *Immigration and Naturalization Service with respect to the*
 11 *following:*

12 (1) *Adjudications of immigrant visa petitions.*

13 (2) *Adjudications of naturalization petitions.*

14 (3) *Adjudications of asylum and refugee applica-*
 15 *tions.*

16 (4) *Adjudications performed at service centers.*

17 (5) *All other adjudications performed by the Im-*
 18 *migration and Naturalization Service.*

19 (c) *CONFORMING AMENDMENTS.*—*Section 302(c) of the*
 20 *Omnibus Crime Control and Safe Streets Act of 1968 (42*
 21 *U.S.C. 3732(c)) is amended—*

22 (1) *by striking “and” at the end of paragraph*
 23 *(22);*

24 (2) *by striking the period at the end of para-*
 25 *graph (23) and inserting “; and”; and*

1 (3) *by adding at the end the following:*

2 “(24) *collect, maintain, compile, analyze, pub-*
 3 *lish, and disseminate information and statistics in-*
 4 *volving the functions of the Bureau of Citizenship and*
 5 *Immigration Services and the Executive Office for*
 6 *Immigration Review.*”.

7 **SEC. 426. PRESERVATION OF ATTORNEY GENERAL’S AU-**
 8 **THORITY.**

9 (a) *IN GENERAL.*—Any function for which this sub-
 10 *chapter vests responsibility in an official other than the At-*
 11 *torney General, or which is transferred by this subchapter*
 12 *to such an official, may, notwithstanding any provision of*
 13 *this subchapter, be performed by the Attorney General, or*
 14 *the Attorney General’s delegate, in lieu of such official.*

15 (b) *REFERENCES.*—In a case in which the Attorney
 16 *General performs a function described in subsection (a),*
 17 *any reference in any other Federal law, Executive order,*
 18 *rule, regulation, document, or delegation of authority to the*
 19 *official otherwise responsible for the function is deemed to*
 20 *refer to the Attorney General.*

21 **SEC. 427. EFFECTIVE DATE.**

22 *Notwithstanding section 4, this subchapter, and the*
 23 *amendments made by this subchapter, shall take effect on*
 24 *the date on which the transfer of functions specified under*
 25 *section 411 takes effect.*

1 **SEC. 428. TRANSITION.**

2 (a) *REFERENCES.*—With respect to any function
3 transferred by this subchapter to, and exercised on or after
4 the effective date specified in section 427 by, the Assistant
5 Attorney General for Citizenship and Immigration Serv-
6 ices, any reference in any other Federal law, Executive
7 order, rule, regulation, or delegation of authority, or any
8 document of or pertaining to a component of government
9 from which such function is transferred—

10 (1) to the head of such component is deemed to
11 refer to the Assistant Attorney General for Citizenship
12 and Immigration Services; or

13 (2) to such component is deemed to refer to the
14 Bureau of Citizenship and Immigration Services.

15 (b) *OTHER TRANSITION ISSUES.*—

16 (1) *EXERCISE OF AUTHORITIES.*—Except as oth-
17 erwise provided by law, a Federal official to whom a
18 function is transferred by this subchapter may, for
19 purposes of performing the function, exercise all au-
20 thorities under any other provision of law that were
21 available with respect to the performance of that func-
22 tion to the official responsible for the performance of
23 the function immediately before the effective date spec-
24 ified in section 427.

25 (2) *SAVINGS PROVISIONS.*—Subsections (a), (b),
26 and (c) of section 812 shall apply to a transfer of

1 *functions under this subchapter in the same manner*
2 *as such provisions apply to a transfer of functions*
3 *under this Act to the Department of Homeland Secu-*
4 *rity.*

5 (3) *TRANSFER AND ALLOCATION OF APPROPRIA-*
6 *TIONS AND PERSONNEL.—The personnel of the De-*
7 *partment of Justice employed in connection with the*
8 *functions transferred by this subchapter (and func-*
9 *tions that the Attorney General determines are prop-*
10 *erly related to the functions of the Bureau of Citizen-*
11 *ship and Immigration Services), and the assets, li-*
12 *abilities, contracts, property, records, and unexpended*
13 *balance of appropriations, authorizations, allocations,*
14 *and other funds employed, held, used, arising from,*
15 *available to, or to be made available to, the Immigra-*
16 *tion and Naturalization Service in connection with*
17 *the functions transferred by this subchapter, subject to*
18 *section 202 of the Budget and Accounting Procedures*
19 *Act of 1950, shall be transferred to the Assistant At-*
20 *torney General for Citizenship and Immigration*
21 *Services for allocation to the appropriate component*
22 *of the Department of Justice. Unexpended funds*
23 *transferred pursuant to this paragraph shall be used*
24 *only for the purposes for which the funds were origi-*
25 *nally authorized and appropriated. The Attorney*

1 *General shall have the right to adjust or realign*
 2 *transfers of funds and personnel effected pursuant to*
 3 *this subchapter for a period of 2 years after the effec-*
 4 *tive date specified in section 427.*

5 (4) *AUTHORITIES OF ATTORNEY GENERAL.—The*
 6 *Attorney General (or a delegate of the Attorney Gen-*
 7 *eral), at such time or times as the Attorney General*
 8 *(or the delegate) shall provide, may make such deter-*
 9 *minations as may be necessary with regard to the*
 10 *functions transferred by this subchapter, and may*
 11 *make such additional incidental dispositions of per-*
 12 *sonnel, assets, liabilities, grants, contracts, property,*
 13 *records, and unexpended balances of appropriations,*
 14 *authorizations, allocations, and other funds held,*
 15 *used, arising from, available to, or to be made avail-*
 16 *able in connection with such functions, as may be*
 17 *necessary to carry out the provisions of this sub-*
 18 *chapter. The Attorney General shall provide for such*
 19 *further measures and dispositions as may be nec-*
 20 *essary to effectuate the purposes of this subchapter.*

21 ***Subchapter B—Other Provisions***

22 ***SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION***
 23 ***SERVICES.***

24 (a) *ESTABLISHMENT OF FEES FOR ADJUDICATION AND*
 25 *NATURALIZATION SERVICES.—Section 286(m) of the Immi-*

1 *gration and Nationality Act (8 U.S.C. 1356(m)) is amend-*
 2 *ed by striking “services, including the costs of similar serv-*
 3 *ices provided without charge to asylum applicants or other*
 4 *immigrants.” and inserting “services.”.*

5 (b) *AUTHORIZATION OF APPROPRIATIONS FOR REF-*
 6 *UGEE AND ASYLUM ADJUDICATIONS.—There are authorized*
 7 *to be appropriated such sums as may be necessary to carry*
 8 *out the provisions of sections 207 through 209 of the Immi-*
 9 *gration and Nationality Act (8 U.S.C. 1157–1159). All*
 10 *funds appropriated under this subsection shall be deposited*
 11 *into the Immigration Examinations Fee Account estab-*
 12 *lished under section 286(m) of the Immigration and Na-*
 13 *tionality Act (8 U.S.C. 1356(m)) and shall remain avail-*
 14 *able until expended.*

15 **SEC. 432. BACKLOG ELIMINATION.**

16 *Section 204(a)(1) of the Immigration Services and In-*
 17 *frastructure Improvements Act of 2000 (8 U.S.C.*
 18 *1573(a)(1)) is amended by striking “not later than one year*
 19 *after the date of enactment of this Act;” and inserting “1*
 20 *year after the date of the enactment of the Homeland Secu-*
 21 *rity Act of 2002;”.*

22 **SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.**

23 (a) *IN GENERAL.—The Attorney General, not later*
 24 *than 1 year after the effective date of this Act, shall submit*
 25 *to the Committees on the Judiciary and Appropriations of*

1 *the United States House of Representatives and of the Sen-*
2 *ate a report with a plan detailing how the Bureau of Citi-*
3 *zenship and Immigration Services, after the transfer of*
4 *functions specified in subchapter 1 takes effect, will com-*
5 *plete efficiently, fairly, and within a reasonable time, the*
6 *adjudications described in paragraphs (1) through (5) of*
7 *section 421(b).*

8 (b) *CONTENTS.—For each type of adjudication to be*
9 *undertaken by the Assistant Attorney General for Citizen-*
10 *ship and Immigration Services, the report shall include the*
11 *following:*

12 (1) *Any potential savings of resources that may*
13 *be implemented without affecting the quality of the*
14 *adjudication.*

15 (2) *The goal for processing time with respect to*
16 *the application.*

17 (3) *Any statutory modifications with respect to*
18 *the adjudication that the Attorney General considers*
19 *advisable.*

20 (c) *CONSULTATION.—In carrying out subsection (a),*
21 *the Attorney General shall consult with the Secretary of*
22 *State, the Secretary of Labor, the Assistant Secretary of the*
23 *Bureau of Border Security of the Department of Homeland*
24 *Security, and the Director of the Executive Office for Immi-*
25 *gration Review to determine how to streamline and improve*

1 *the process for applying for and making adjudications de-*
 2 *scribed in section 421(b) and related processes.*

3 **SEC. 434. REPORT ON RESPONDING TO FLUCTUATING**
 4 **NEEDS.**

5 *Not later than 30 days after the date of the enactment*
 6 *of this Act, the Attorney General shall submit to the Con-*
 7 *gress a report on changes in law, including changes in au-*
 8 *thorizations of appropriations and in appropriations, that*
 9 *are needed to permit the Immigration and Naturalization*
 10 *Service, and, after the transfer of functions specified in sub-*
 11 *chapter 1 takes effect, the Bureau of Citizenship and Immi-*
 12 *gration Services, to ensure a prompt and timely response*
 13 *to emergent, unforeseen, or impending changes in the num-*
 14 *ber of applications for immigration benefits, and otherwise*
 15 *to ensure the accommodation of changing immigration serv-*
 16 *ice needs.*

17 **SEC. 435. APPLICATION OF INTERNET-BASED TECH-**
 18 **NOLOGIES.**

19 *(a) ESTABLISHMENT OF TRACKING SYSTEM.—The At-*
 20 *torney General, not later than 1 year after the effective date*
 21 *of this Act, in consultation with the Technology Advisory*
 22 *Committee established under subsection (c), shall establish*
 23 *an Internet-based system, that will permit a person, em-*
 24 *ployer, immigrant, or nonimmigrant who has filings with*
 25 *the Attorney General for any benefit under the Immigration*

1 *and Nationality Act (8 U.S.C. 1101 et seq.), access to online*
2 *information about the processing status of the filing in-*
3 *volved.*

4 (b) *FEASIBILITY STUDY FOR ONLINE FILING AND IM-*
5 *PROVED PROCESSING.—*

6 (1) *ONLINE FILING.—The Attorney General, in*
7 *consultation with the Technology Advisory Committee*
8 *established under subsection (c), shall conduct a feasi-*
9 *bility study on the online filing of the filings de-*
10 *scribed in subsection (a). The study shall include a*
11 *review of computerization and technology of the Im-*
12 *migration and Naturalization Service relating to the*
13 *immigration services and processing of filings related*
14 *to immigrant services. The study shall also include an*
15 *estimate of the timeframe and cost and shall consider*
16 *other factors in implementing such a filing system,*
17 *including the feasibility of fee payment online.*

18 (2) *REPORT.—A report on the study under this*
19 *subsection shall be submitted to the Committees on the*
20 *Judiciary of the United States House of Representa-*
21 *tives and the Senate not later than 1 year after the*
22 *effective date of this Act.*

23 (c) *TECHNOLOGY ADVISORY COMMITTEE.—*

24 (1) *ESTABLISHMENT.—The Attorney General*
25 *shall establish, not later than 60 days after the effec-*

1 *tive date of this Act, an advisory committee (in this*
 2 *section referred to as the “Technology Advisory Com-*
 3 *mittee”) to assist the Attorney General in—*

4 *(A) establishing the tracking system under*
 5 *subsection (a); and*

6 *(B) conducting the study under subsection*
 7 *(b).*

8 *The Technology Advisory Committee shall be estab-*
 9 *lished after consultation with the Committees on the*
 10 *Judiciary of the United States House of Representa-*
 11 *tives and the Senate.*

12 *(2) COMPOSITION.—The Technology Advisory*
 13 *Committee shall be composed of representatives from*
 14 *high technology companies capable of establishing and*
 15 *implementing the system in an expeditious manner,*
 16 *and representatives of persons who may use the track-*
 17 *ing system described in subsection (a) and the online*
 18 *filing system described in subsection (b)(1).*

19 **SEC. 436. CHILDREN’S AFFAIRS.**

20 *(a) TRANSFER OF FUNCTIONS.—There are transferred*
 21 *to the Director of the Office of Refugee Resettlement of the*
 22 *Department of Health and Human Services functions*
 23 *under the immigration laws of the United States with re-*
 24 *spect to the care of unaccompanied alien children that were*
 25 *vested by statute in, or performed by, the Commissioner of*

1 *Immigration and Naturalization (or any officer, employee,*
2 *or component of the Immigration and Naturalization Serv-*
3 *ice) immediately before the effective date specified in sub-*
4 *section (d).*

5 (b) *FUNCTIONS.*—

6 (1) *IN GENERAL.*—*Pursuant to the transfer made*
7 *by subsection (a), the Director of the Office of Refugee*
8 *Resettlement shall be responsible for—*

9 (A) *coordinating and implementing the care*
10 *and placement of unaccompanied alien children*
11 *who are in Federal custody by reason of their*
12 *immigration status, including developing a plan*
13 *to be submitted to the Congress on how to ensure*
14 *that qualified and independent legal counsel is*
15 *timely appointed to represent the interests of*
16 *each such child, consistent with the law regard-*
17 *ing appointment of counsel that is in effect on*
18 *the date of the enactment of this Act;*

19 (B) *ensuring that the interests of the child*
20 *are considered in decisions and actions relating*
21 *to the care and custody of an unaccompanied*
22 *alien child;*

23 (C) *making placement determinations for*
24 *all unaccompanied alien children who are in*

1 *Federal custody by reason of their immigration*
2 *status;*

3 *(D) implementing the placement determina-*
4 *tions;*

5 *(E) implementing policies with respect to*
6 *the care and placement of unaccompanied alien*
7 *children;*

8 *(F) identifying a sufficient number of*
9 *qualified individuals, entities, and facilities to*
10 *house unaccompanied alien children;*

11 *(G) overseeing the infrastructure and per-*
12 *sonnel of facilities in which unaccompanied*
13 *alien children reside;*

14 *(H) reuniting unaccompanied alien chil-*
15 *dren with a parent abroad in appropriate cases;*

16 *(I) compiling, updating, and publishing at*
17 *least annually a state-by-state list of profes-*
18 *sionals or other entities qualified to provide*
19 *guardian and attorney representation services*
20 *for unaccompanied alien children;*

21 *(J) maintaining statistical information and*
22 *other data on unaccompanied alien children for*
23 *whose care and placement the Director is respon-*
24 *sible, which shall include—*

1 (i) biographical information, such as a
2 child's name, gender, date of birth, country
3 of birth, and country of habitual residence;

4 (ii) the date on which the child came
5 into Federal custody by reason of his or her
6 immigration status;

7 (iii) information relating to the child's
8 placement, removal, or release from each fa-
9 cility in which the child has resided;

10 (iv) in any case in which the child is
11 placed in detention or released, an expla-
12 nation relating to the detention or release;
13 and

14 (v) the disposition of any actions in
15 which the child is the subject;

16 (K) collecting and compiling statistical in-
17 formation from the Department of Justice, the
18 Department of Homeland Security, and the De-
19 partment of State on each department's actions
20 relating to unaccompanied alien children; and

21 (L) conducting investigations and inspec-
22 tions of facilities and other entities in which un-
23 accompanied alien children reside.

24 (2) COORDINATION WITH OTHER ENTITIES; NO
25 RELEASE ON OWN RECOGNIZANCE.—In making deter-

1 *minations described in paragraph (1)(C), the Director*
2 *of the Office of Refugee Resettlement—*

3 *(A) shall consult with appropriate juvenile*
4 *justice professionals, the Director of the Bureau*
5 *of Citizenship and Immigration Services of the*
6 *Department of Justice, and the Assistant Sec-*
7 *retary of the Bureau of Border Security of the*
8 *Department of Homeland Security to ensure that*
9 *such determinations ensure that unaccompanied*
10 *alien children described in such subparagraph—*

11 *(i) are likely to appear for all hearings*
12 *or proceedings in which they are involved;*

13 *(ii) are protected from smugglers, traf-*
14 *fickers, or others who might seek to vic-*
15 *timize or otherwise engage them in crimi-*
16 *nal, harmful, or exploitive activity; and*

17 *(iii) are placed in a setting in which*
18 *they not likely to pose a danger to them-*
19 *selves or others; and*

20 *(B) shall not release such children upon*
21 *their own recognizance.*

22 *(3) DUTIES WITH RESPECT TO FOSTER CARE.—*

23 *In carrying out the duties described in paragraph*
24 *(1)(G), the Director of the Office of Refugee Resettle-*
25 *ment is encouraged to use the refugee children foster*

1 *care system established pursuant to section 412(d) of*
2 *the Immigration and Nationality Act (8 U.S.C.*
3 *1522(d)) for the placement of unaccompanied alien*
4 *children.*

5 *(c) RULE OF CONSTRUCTION.—Nothing in this section*
6 *may be construed to transfer the responsibility for adjudi-*
7 *cating benefit determinations under the Immigration and*
8 *Nationality Act (8 U.S.C. 1101 et seq.) from the authority*
9 *of any official of the Department of Justice, the Department*
10 *of Homeland Security, or the Department of State.*

11 *(d) EFFECTIVE DATE.—Notwithstanding section 4,*
12 *this section shall take effect on the date on which the trans-*
13 *fer of functions specified under section 411 takes effect.*

14 *(e) REFERENCES.—With respect to any function*
15 *transferred by this section, any reference in any other Fed-*
16 *eral law, Executive order, rule, regulation, or delegation of*
17 *authority, or any document of or pertaining to a component*
18 *of government from which such function is transferred—*

19 *(1) to the head of such component is deemed to*
20 *refer to the Director of the Office of Refugee Resettle-*
21 *ment; or*

22 *(2) to such component is deemed to refer to the*
23 *Office of Refugee Resettlement of the Department of*
24 *Health and Human Services.*

25 *(f) OTHER TRANSITION ISSUES.—*

1 (1) *EXERCISE OF AUTHORITIES.*—*Except as oth-*
2 *erwise provided by law, a Federal official to whom a*
3 *function is transferred by this section may, for pur-*
4 *poses of performing the function, exercise all authori-*
5 *ties under any other provision of law that were avail-*
6 *able with respect to the performance of that function*
7 *to the official responsible for the performance of the*
8 *function immediately before the effective date specified*
9 *in subsection (d).*

10 (2) *SAVINGS PROVISIONS.*—*Subsections (a), (b),*
11 *and (c) of section 812 shall apply to a transfer of*
12 *functions under this section in the same manner as*
13 *such provisions apply to a transfer of functions under*
14 *this Act to the Department of Homeland Security.*

15 (3) *TRANSFER AND ALLOCATION OF APPROPRIA-*
16 *TIONS AND PERSONNEL.*—*The personnel of the De-*
17 *partment of Justice employed in connection with the*
18 *functions transferred by this section, and the assets,*
19 *liabilities, contracts, property, records, and unex-*
20 *pended balance of appropriations, authorizations, al-*
21 *locations, and other funds employed, held, used, aris-*
22 *ing from, available to, or to be made available to, the*
23 *Immigration and Naturalization Service in connec-*
24 *tion with the functions transferred by this section,*
25 *subject to section 202 of the Budget and Accounting*

1 *Procedures Act of 1950, shall be transferred to the Di-*
 2 *rector of the Office of Refugee Resettlement for alloca-*
 3 *tion to the appropriate component of the Department*
 4 *of Health and Human Services. Unexpended funds*
 5 *transferred pursuant to this paragraph shall be used*
 6 *only for the purposes for which the funds were origi-*
 7 *nally authorized and appropriated.*

8 *(g) DEFINITIONS.—As used in this section—*

9 *(1) the term “placement” means the placement of*
 10 *an unaccompanied alien child in either a detention*
 11 *facility or an alternative to such a facility; and*

12 *(2) the term “unaccompanied alien child” means*
 13 *a child who—*

14 *(A) has no lawful immigration status in the*
 15 *United States;*

16 *(B) has not attained 18 years of age; and*

17 *(C) with respect to whom—*

18 *(i) there is no parent or legal guardian*
 19 *in the United States; or*

20 *(ii) no parent or legal guardian in the*
 21 *United States is available to provide care*
 22 *and physical custody.*

1 **CHAPTER 3—GENERAL PROVISIONS**

2 **SEC. 441. ABOLISHMENT OF INS.**

3 *The Immigration and Naturalization Service of the*
4 *Department of Justice is abolished.*

5 **SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

6 (a) *DEFINITIONS.—For purposes of this section—*

7 (1) *the term “employee” means an employee (as*
8 *defined by section 2105 of title 5, United States Code)*
9 *who—*

10 (A) *has completed at least 3 years of cur-*
11 *rent continuous service with 1 or more covered*
12 *entities; and*

13 (B) *is serving under an appointment with-*
14 *out time limitation;*

15 *but does not include any person under subparagraphs*
16 *(A)–(G) of section 663(a)(2) of Public Law 104–208*
17 *(5 U.S.C. 5597 note);*

18 (2) *the term “covered entity” means—*

19 (A) *the Immigration and Naturalization*
20 *Service;*

21 (B) *the Bureau of Border Security of the*
22 *Department of Homeland Security; and*

23 (C) *the Bureau of Citizenship and Immi-*
24 *gration Services of the Department of Justice;*
25 *and*

1 (3) the term “transfer date” means the date on
2 which the transfer of functions specified under section
3 411 takes effect.

4 (b) *STRATEGIC RESTRUCTURING PLAN*.—Before the
5 Attorney General or the Secretary obligates any resources
6 for voluntary separation incentive payments under this sec-
7 tion, such official shall submit to the appropriate commit-
8 tees of Congress a strategic restructuring plan, which shall
9 include—

10 (1) an organizational chart depicting the covered
11 entities after their restructuring pursuant to this Act;

12 (2) a summary description of how the authority
13 under this section will be used to help carry out that
14 restructuring; and

15 (3) the information specified in section 663(b)(2)
16 of Public Law 104–208 (5 U.S.C. 5597 note).

17 As used in the preceding sentence, the “appropriate commit-
18 tees of Congress” are the Committees on Appropriations,
19 Government Reform, and the Judiciary of the House of
20 Representatives, and the Committees on Appropriations,
21 Governmental Affairs, and the Judiciary of the Senate.

22 (c) *AUTHORITY*.—The Attorney General and the Sec-
23 retary may, to the extent necessary to help carry out their
24 respective strategic restructuring plan described in sub-

1 *section (b), make voluntary separation incentive payments*
2 *to employees. Any such payment—*

3 *(1) shall be paid to the employee, in a lump*
4 *sum, after the employee has separated from service;*

5 *(2) shall be paid from appropriations or funds*
6 *available for the payment of basic pay of the em-*
7 *ployee;*

8 *(3) shall be equal to the lesser of—*

9 *(A) the amount the employee would be enti-*
10 *tled to receive under section 5595(c) of title 5,*
11 *United States Code; or*

12 *(B) an amount not to exceed \$25,000, as de-*
13 *termined by the Attorney General or the Sec-*
14 *retary;*

15 *(4) may not be made except in the case of any*
16 *qualifying employee who voluntarily separates*
17 *(whether by retirement or resignation) before the end*
18 *of—*

19 *(A) the 3-month period beginning on the*
20 *date on which such payment is offered or made*
21 *available to such employee; or*

22 *(B) the 3-year period beginning on the date*
23 *of the enactment of this Act,*
24 *whichever occurs first;*

1 (5) *shall not be a basis for payment, and shall*
 2 *not be included in the computation, of any other type*
 3 *of Government benefit; and*

4 (6) *shall not be taken into account in deter-*
 5 *mining the amount of any severance pay to which the*
 6 *employee may be entitled under section 5595 of title*
 7 *5, United States Code, based on any other separation.*

8 (d) *ADDITIONAL AGENCY CONTRIBUTIONS TO THE RE-*
 9 *TIREMENT FUND.—*

10 (1) *IN GENERAL.—In addition to any payments*
 11 *which it is otherwise required to make, the Depart-*
 12 *ment of Justice and the Department of Homeland Se-*
 13 *curity shall, for each fiscal year with respect to which*
 14 *it makes any voluntary separation incentive pay-*
 15 *ments under this section, remit to the Office of Per-*
 16 *sonnel Management for deposit in the Treasury of the*
 17 *United States to the credit of the Civil Service Retire-*
 18 *ment and Disability Fund the amount required under*
 19 *paragraph (2).*

20 (2) *AMOUNT REQUIRED.—The amount required*
 21 *under this paragraph shall, for any fiscal year, be the*
 22 *amount under subparagraph (A) or (B), whichever is*
 23 *greater.*

24 (A) *FIRST METHOD.—The amount under*
 25 *this subparagraph shall, for any fiscal year, be*

1 *equal to the minimum amount necessary to offset*
2 *the additional costs to the retirement systems*
3 *under title 5, United States Code (payable out of*
4 *the Civil Service Retirement and Disability*
5 *Fund) resulting from the voluntary separation of*
6 *the employees described in paragraph (3), as de-*
7 *termined under regulations of the Office of Per-*
8 *sonnel Management.*

9 *(B) SECOND METHOD.—The amount under*
10 *this subparagraph shall, for any fiscal year, be*
11 *equal to 45 percent of the sum total of the final*
12 *basic pay of the employees described in para-*
13 *graph (3).*

14 *(3) COMPUTATIONS TO BE BASED ON SEPARA-*
15 *TIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—*
16 *The employees described in this paragraph are those*
17 *employees who receive a voluntary separation incen-*
18 *tive payment under this section based on their sepa-*
19 *rating from service during the fiscal year with respect*
20 *to which the payment under this subsection relates.*

21 *(4) FINAL BASIC PAY DEFINED.—In this sub-*
22 *section, the term “final basic pay” means, with re-*
23 *spect to an employee, the total amount of basic pay*
24 *which would be payable for a year of service by such*
25 *employee, computed using the employee’s final rate of*

1 *basic pay, and, if last serving on other than a full-*
2 *time basis, with appropriate adjustment therefor.*

3 *(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE*
4 *GOVERNMENT.—An individual who receives a voluntary*
5 *separation incentive payment under this section and who,*
6 *within 5 years after the date of the separation on which*
7 *the payment is based, accepts any compensated employment*
8 *with the Government or works for any agency of the Gov-*
9 *ernment through a personal services contract, shall be re-*
10 *quired to pay, prior to the individual's first day of employ-*
11 *ment, the entire amount of the incentive payment. Such*
12 *payment shall be made to the covered entity from which*
13 *the individual separated or, if made on or after the transfer*
14 *date, to the Deputy Attorney General (for transfer to the*
15 *appropriate component of the Department of Justice, if nec-*
16 *essary) or the Under Secretary for Border and Transpor-*
17 *tation Security (for transfer to the appropriate component*
18 *of the Department of Homeland Security, if necessary).*

19 *(f) EFFECT ON EMPLOYMENT LEVELS.—*

20 *(1) INTENDED EFFECT.—Voluntary separations*
21 *under this section are not intended to necessarily re-*
22 *duce the total number of full-time equivalent positions*
23 *in any covered entity.*

24 *(2) USE OF VOLUNTARY SEPARATIONS.—A cov-*
25 *ered entity may redeploy or use the full-time equiva-*

1 *lent positions vacated by voluntary separations under*
 2 *this section to make other positions available to more*
 3 *critical locations or more critical occupations.*

4 **SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION**
 5 **PROJECT RELATING TO DISCIPLINARY AC-**
 6 **TION.**

7 (a) *IN GENERAL.*—*The Attorney General and the Sec-*
 8 *retary may each, during a period ending not later than*
 9 *5 years after the date of the enactment of this Act, conduct*
 10 *a demonstration project for the purpose of determining*
 11 *whether one or more changes in the policies or procedures*
 12 *relating to methods for disciplining employees would result*
 13 *in improved personnel management.*

14 (b) *SCOPE.*—*A demonstration project under this*
 15 *section—*

16 (1) *may not cover any employees apart from*
 17 *those employed in or under a covered entity; and*

18 (2) *shall not be limited by any provision of*
 19 *chapter 43, 75, or 77 of title 5, United States Code.*

20 (c) *PROCEDURES.*—*Under the demonstration project—*

21 (1) *the use of alternative means of dispute reso-*
 22 *lution (as defined in section 571 of title 5, United*
 23 *States Code) shall be encouraged, whenever appro-*
 24 *priate; and*

1 (2) *each covered entity under the jurisdiction of*
2 *the official conducting the project shall be required to*
3 *provide for the expeditious, fair, and independent re-*
4 *view of any action to which section 4303 or sub-*
5 *chapter II of chapter 75 of such title 5 would other-*
6 *wise apply (except an action described in section*
7 *7512(5) thereof).*

8 (d) *ACTIONS INVOLVING DISCRIMINATION.—Notwith-*
9 *standing any other provision of this section, if, in the case*
10 *of any matter described in section 7702(a)(1)(B) of title 5,*
11 *United States Code, there is no judicially reviewable action*
12 *under the demonstration project within 120 days after the*
13 *filing of an appeal or other formal request for review (re-*
14 *ferred to in subsection (c)(2)), an employee shall be entitled*
15 *to file a civil action to the same extent and in the same*
16 *manner as provided in section 7702(e)(1) of such title 5*
17 *(in the matter following subparagraph (C) thereof).*

18 (e) *CERTAIN EMPLOYEES.—Employees shall not be in-*
19 *cluded within any project under this section if such employ-*
20 *ees are—*

21 (1) *neither managers nor supervisors; and*

22 (2) *within a unit with respect to which a labor*
23 *organization is accorded exclusive recognition under*
24 *chapter 71 of title 5, United States Code.*

1 *Notwithstanding the preceding sentence, an aggrieved em-*
 2 *ployee within a unit (referred to in paragraph (2)) may*
 3 *elect to participate in a complaint procedure developed*
 4 *under the demonstration project in lieu of any negotiated*
 5 *grievance procedure and any statutory procedure (as such*
 6 *term is used in section 7121 of such title 5).*

7 (f) *REPORTS.*—*The General Accounting Office shall*
 8 *prepare and submit to the Committees on Government Re-*
 9 *form and the Judiciary of the House of Representatives and*
 10 *the Committees on Governmental Affairs and the Judiciary*
 11 *of the Senate periodic reports on any demonstration project*
 12 *conducted under this section, such reports to be submitted*
 13 *after the second and fourth years of its operation. Upon*
 14 *request, the Attorney General or the Secretary shall furnish*
 15 *such information as the General Accounting Office may re-*
 16 *quire to carry out this subsection.*

17 (g) *DEFINITION.*—*In this section, the term “covered*
 18 *entity” has the meaning given such term in section*
 19 *442(a)(2).*

20 **SEC. 444. SENSE OF CONGRESS.**

21 *It is the sense of the Congress that—*

22 (1) *the missions of the Bureau of Border Secu-*
 23 *urity of the Department of Homeland Security and the*
 24 *Bureau of Citizenship and Immigration Services of*
 25 *the Department of Justice are equally important and,*

1 *accordingly, they each should be adequately funded;*
2 *and*

3 *(2) the functions transferred under this subtitle*
4 *should not, after such transfers take effect, operate at*
5 *levels below those in effect prior to the enactment of*
6 *this Act.*

7 **SEC. 445. REPORTS AND IMPLEMENTATION PLANS.**

8 *(a) DIVISION OF FUNDS.—The Attorney General and*
9 *the Secretary, not later than 120 days after the effective*
10 *date of this Act, shall each submit to the Committees on*
11 *Appropriations and the Judiciary of the United States*
12 *House of Representatives and of the Senate a report on the*
13 *proposed division and transfer of funds, including unex-*
14 *pected funds, appropriations, and fees, between the Bureau*
15 *of Citizenship and Immigration Services and the Bureau*
16 *of Border Security.*

17 *(b) DIVISION OF PERSONNEL.—The Attorney General*
18 *and the Secretary, not later than 120 days after the effective*
19 *date of this Act, shall each submit to the Committees on*
20 *Appropriations and the Judiciary of the United States*
21 *House of Representatives and of the Senate a report on the*
22 *proposed division of personnel between the Bureau of Citi-*
23 *zenship and Immigration Services and the Bureau of Bor-*
24 *der Security.*

25 *(c) IMPLEMENTATION PLAN.—*

1 (1) *IN GENERAL.*—*The Attorney General and the*
2 *Secretary, not later than 120 days after the effective*
3 *date of this Act, and every 6 months thereafter until*
4 *the termination of fiscal year 2005, shall each submit*
5 *to the Committees on Appropriations and the Judici-*
6 *ary of the United States House of Representatives*
7 *and of the Senate an implementation plan to carry*
8 *out this Act.*

9 (2) *CONTENTS.*—*The implementation plan*
10 *should include details concerning the separation of the*
11 *Bureau of Citizenship and Immigration Services and*
12 *the Bureau of Border Security, including the fol-*
13 *lowing:*

14 (A) *Organizational structure, including the*
15 *field structure.*

16 (B) *Chain of command.*

17 (C) *Procedures for interaction among such*
18 *bureaus.*

19 (D) *Fraud detection and investigation.*

20 (E) *The processing and handling of removal*
21 *proceedings, including expedited removal and*
22 *applications for relief from removal.*

23 (F) *Recommendations for conforming*
24 *amendments to the Immigration and Nationality*
25 *Act (8 U.S.C. 1101 et seq.).*

1 (G) *Establishment of a transition team.*

2 (H) *Methods to phase in the costs of sepa-*
3 *rating the administrative support systems of the*
4 *Immigration and Naturalization Service in*
5 *order to provide for separate administrative sup-*
6 *port systems for the Bureau of Citizenship and*
7 *Immigration Services and the Bureau of Border*
8 *Security.*

9 (d) *COMPTROLLER GENERAL STUDIES AND RE-*
10 *PORTS.—*

11 (1) *STATUS REPORTS ON TRANSITION.—Not later*
12 *than 18 months after the date on which the transfer*
13 *of functions specified under section 411 takes effect,*
14 *and every 6 months thereafter, until full implementa-*
15 *tion of this subtitle has been completed, the Comp-*
16 *troller General of the United States shall submit to*
17 *the Committees on Appropriations and on the Judici-*
18 *ary of the United States House of Representatives*
19 *and the Senate a report containing the following:*

20 (A) *A determination of whether the trans-*
21 *fers of functions made by chapters 1 and 2 have*
22 *been completed, and if a transfer of functions has*
23 *not taken place, identifying the reasons why the*
24 *transfer has not taken place.*

1 (B) *If the transfers of functions made by*
2 *chapters 1 and 2 have been completed, an identi-*
3 *fication of any issues that have arisen due to the*
4 *completed transfers.*

5 (C) *An identification of any issues that*
6 *may arise due to any future transfer of func-*
7 *tions.*

8 (2) *REPORT ON MANAGEMENT.—Not later than 4*
9 *years after the date on which the transfer of functions*
10 *specified under section 411 takes effect, the Comp-*
11 *troller General of the United States shall submit to*
12 *the Committees on Appropriations and on the Judici-*
13 *ary of the United States House of Representatives*
14 *and the Senate a report, following a study, con-*
15 *taining the following:*

16 (A) *Determinations of whether the transfer*
17 *of functions from the Immigration and Natu-*
18 *ralization Service to the Bureau of Citizenship*
19 *and Immigration Services and the Bureau of*
20 *Border Security have improved, with respect to*
21 *each function transferred, the following:*

22 (i) *Operations.*

23 (ii) *Management, including account-*
24 *ability and communication.*

25 (iii) *Financial administration.*

1 (iv) *Recordkeeping, including informa-*
 2 *tion management and technology.*

3 (B) *A statement of the reasons for the deter-*
 4 *minations under subparagraph (A).*

5 (C) *Any recommendations for further im-*
 6 *provements to the Bureau of Citizenship and Im-*
 7 *migration Services and the Bureau of Border Se-*
 8 *curity.*

9 (3) *REPORT ON FEES.*—*Not later than 1 year*
 10 *after the date of the enactment of this Act, the Comp-*
 11 *troller General of the United States shall submit to*
 12 *the Committees on the Judiciary of the House of Rep-*
 13 *resentatives and of the Senate a report examining*
 14 *whether the Bureau of Citizenship and Immigration*
 15 *Services is likely to derive sufficient funds from fees*
 16 *to carry out its functions in the absence of appro-*
 17 *priated funds.*

18 **SEC. 446. IMMIGRATION FUNCTIONS.**

19 (a) *ANNUAL REPORT.*—

20 (1) *IN GENERAL.*—*One year after the date of the*
 21 *enactment of this Act, and each year thereafter, the*
 22 *Attorney General shall submit a report to the Presi-*
 23 *dent, to the Committees on the Judiciary and Govern-*
 24 *ment Reform of the United States House of Rep-*
 25 *resentatives, and to the Committees on the Judiciary*

1 *and Government Affairs of the Senate, on the impact*
2 *the transfers made by this subtitle has had on immi-*
3 *gration functions.*

4 (2) *MATTER INCLUDED.—The report shall ad-*
5 *dress the following with respect to the period covered*
6 *by the report:*

7 (A) *The aggregate number of all immigra-*
8 *tion applications and petitions received, and*
9 *processed, by the Department;*

10 (B) *Region-by-region statistics on the aggre-*
11 *gate number of immigration applications and*
12 *petitions filed by an alien (or filed on behalf of*
13 *an alien) and denied, disaggregated by category*
14 *of denial and application or petition type.*

15 (C) *The quantity of backlogged immigration*
16 *applications and petitions that have been proc-*
17 *essed, the aggregate number awaiting processing,*
18 *and a detailed plan for eliminating the backlog.*

19 (D) *The average processing period for im-*
20 *migration applications and petitions,*
21 *disaggregated by application or petition type.*

22 (E) *The number and types of immigration-*
23 *related grievances filed with any official of the*
24 *Department of Justice, and if those grievances*
25 *were resolved.*

1 (F) *Plans to address grievances and im-*
 2 *prove immigration services.*

3 (G) *Whether immigration-related fees were*
 4 *used consistent with legal requirements regarding*
 5 *such use.*

6 (H) *Whether immigration-related questions*
 7 *conveyed by customers to the Department of Jus-*
 8 *tice (whether conveyed in person, by telephone,*
 9 *or by means of the Internet) were answered effec-*
 10 *tively and efficiently.*

11 (b) *SENSE OF THE CONGRESS REGARDING IMMIGRA-*
 12 *TION SERVICES.—It is the sense of the Congress that—*

13 (1) *the quality and efficiency of immigration*
 14 *services rendered by the Federal Government should*
 15 *be improved after the transfers made by this subtitle*
 16 *take effect; and*

17 (2) *the Attorney General should undertake efforts*
 18 *to guarantee that concerns regarding the quality and*
 19 *efficiency of immigration services are addressed after*
 20 *such effective date.*

21 ***Subtitle C—United States Customs***
 22 ***Service***

23 ***SEC. 451. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.***

24 (a) *ESTABLISHMENT.—There is established in the De-*
 25 *partment the United States Customs Service, under the au-*

1 *thority of the Under Secretary for Border and Transpor-*
 2 *tation Security, which shall be vested with those functions*
 3 *set forth in section 457(7), and the personnel, assets, and*
 4 *liabilities attributable to those functions.*

5 (b) COMMISSIONER OF CUSTOMS.—

6 (1) IN GENERAL.—*There shall be at the head of*
 7 *the Customs Service a Commissioner of Customs, who*
 8 *shall be appointed by the President, by and with the*
 9 *advice and consent of the Senate.*

10 (2) COMPENSATION.—*Section 5314 of title 5,*
 11 *United States Code, is amended by striking*

12 *“Commissioner of Customs, Department of the*
 13 *Treasury”*

14 *and inserting*

15 *“Commissioner of Customs, Department of*
 16 *Homeland Security.”.*

17 (3) CONTINUATION IN OFFICE.—*The individual*
 18 *serving as the Commissioner of Customs on the day*
 19 *before the effective date of this Act may serve as the*
 20 *Commissioner of Customs on and after such effective*
 21 *date until a Commissioner of Customs is appointed*
 22 *under paragraph (1).*

23 **SEC. 452. RETENTION OF CUSTOMS REVENUE FUNCTIONS**

24 **BY SECRETARY OF THE TREASURY.**

25 (a) RETENTION BY SECRETARY OF THE TREASURY.—

1 (1) *RETENTION OF AUTHORITY.*—*Notwith-*
 2 *standing sections 401(5), 402(1), and 808(e)(2), au-*
 3 *thority that was vested in the Secretary of the Treas-*
 4 *ury by law before the effective date of this Act under*
 5 *those provisions of law set forth in paragraph (2)*
 6 *shall not be transferred to the Secretary by reason of*
 7 *this Act, and on and after the effective date of this*
 8 *Act, the Secretary of the Treasury may delegate any*
 9 *such authority to the Secretary at the discretion of the*
 10 *Secretary of the Treasury. The Secretary of the Treas-*
 11 *ury shall consult with the Secretary regarding the ex-*
 12 *ercise of any such authority not delegated to the Sec-*
 13 *retary.*

14 (2) *STATUTES.*—*The provisions of law referred*
 15 *to in paragraph (1) are the following: the Tariff Act*
 16 *of 1930; section 249 of the Revised Statutes of the*
 17 *United States (19 U.S.C. 3); section 2 of the Act of*
 18 *March 4, 1923 (19 U.S.C. 6); section 13031 of the*
 19 *Consolidated Omnibus Budget Reconciliation Act of*
 20 *1985 (19 U.S.C. 58c); section 251 of the Revised Stat-*
 21 *utes of the United States (19 U.S.C. 66); section 1 of*
 22 *the Act of June 26, 1930 (19 U.S.C. 68); the Foreign*
 23 *Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of*
 24 *the Act of March 2, 1911 (19 U.S.C. 198); the Trade*
 25 *Act of 1974; the Trade Agreements Act of 1979; the*

1 *North American Free Trade Area Implementation*
 2 *Act; the Uruguay Round Agreements Act; the Carib-*
 3 *bean Basin Economic Recovery Act; the Andean*
 4 *Trade Preference Act; the African Growth and Oppor-*
 5 *tunity Act; and any other provision of law vesting*
 6 *customs revenue functions in the Secretary of the*
 7 *Treasury.*

8 (b) *MAINTENANCE OF CUSTOMS REVENUE FUNC-*
 9 *TIONS.—*

10 (1) *MAINTENANCE OF FUNCTIONS.—Notwith-*
 11 *standing any other provision of this Act, the Sec-*
 12 *retary may not consolidate, alter, discontinue, or di-*
 13 *minish those functions described in paragraph (2)*
 14 *performed by the United States Customs Service (as*
 15 *established under section 451) on or after the effective*
 16 *date of this Act, reduce the staffing level, or the com-*
 17 *ensation or benefits under title 5, United States*
 18 *Code, of personnel attributable to such functions, or*
 19 *reduce the resources attributable to such functions,*
 20 *and the Secretary shall ensure that an appropriate*
 21 *management structure is implemented to carry out*
 22 *such functions.*

23 (2) *FUNCTIONS.—The functions referred to in*
 24 *paragraph (1) are those functions performed by the*
 25 *following personnel, and associated support staff, of*

1 *the United States Customs Service on the day before*
 2 *the effective date of this Act: Import Specialists,*
 3 *Entry Specialists, Drawback Specialists, National*
 4 *Import Specialist, Fines and Penalties Specialists,*
 5 *attorneys of the Office of Regulations and Rulings,*
 6 *Customs Auditors, International Trade Specialists,*
 7 *Financial Systems Specialists.*

8 (c) *NEW PERSONNEL.*—*The Secretary of the Treasury*
 9 *is authorized to appoint up to 20 new personnel to work*
 10 *with personnel of the Department in performing customs*
 11 *revenue functions.*

12 **SEC. 453. ESTABLISHMENT AND IMPLEMENTATION OF COST**
 13 **ACCOUNTING SYSTEM; REPORTS.**

14 (a) *ESTABLISHMENT AND IMPLEMENTATION.*—

15 (1) *IN GENERAL.*—*Not later than September 30,*
 16 *2003, the Commissioner of Customs shall, in accord-*
 17 *ance with the audit of the Customs Service's fiscal*
 18 *years 2000 and 1999 financial statements (as con-*
 19 *tained in the report of the Office of the Inspector Gen-*
 20 *eral of the Department of the Treasury issued on Feb-*
 21 *ruary 23, 2001), establish and implement a cost ac-*
 22 *counting system for expenses incurred in the oper-*
 23 *ation of the Customs Service.*

24 (2) *ADDITIONAL REQUIREMENT.*—*The cost ac-*
 25 *counting system described in paragraph (1) shall pro-*

1 *vide for an identification of expenses based on the*
 2 *type of operation, the port at which the operation*
 3 *took place, the amount of time spent on the operation*
 4 *by personnel of the Customs Service, and an identi-*
 5 *fication of expenses based on any other appropriate*
 6 *classification necessary to provide for an accurate*
 7 *and complete accounting of the expenses.*

8 (3) *USE OF MERCHANDISE PROCESSING FEES.—*

9 *The cost accounting system described in paragraph*
 10 *(1) shall provide for an identification of all amounts*
 11 *expended pursuant to section 13031(f)(2) of the Con-*
 12 *solidated Omnibus Budget Reconciliation Act of 1985.*

13 (b) *REPORTS.—Beginning on the date of the enactment*
 14 *of this Act and ending on the date on which the cost ac-*
 15 *counting system described in subsection (a) is fully imple-*
 16 *mented, the Commissioner of Customs shall prepare and*
 17 *submit to the Committee on Ways and Means of the House*
 18 *of Representatives and the Committee on Finance of the*
 19 *Senate on a quarterly basis a report on the progress of im-*
 20 *plementing the cost accounting system pursuant to sub-*
 21 *section (a).*

22 **SEC. 454. PRESERVATION OF CUSTOMS FUNDS.**

23 *Notwithstanding any other provision of this Act, no*
 24 *funds available to the United States Customs Service or col-*
 25 *lected under paragraphs (1) through (8) of section 13031(a)*

1 *of the Consolidated Omnibus Budget Reconciliation Act of*
2 *1985 may be transferred for use by any other agency or*
3 *office in the Department.*

4 **SEC. 455. SEPARATE BUDGET REQUEST FOR CUSTOMS.**

5 *The President shall include in each budget transmitted*
6 *to the Congress under section 1105 of title 31, United States*
7 *Code, a separate budget request for the United States Cus-*
8 *toms Service.*

9 **SEC. 456. PAYMENT OF DUTIES AND FEES.**

10 *Section 505(a) of the Tariff Act of 1930 (19 U.S.C.*
11 *1505(a)) is amended—*

12 *(1) in the first sentence—*

13 *(A) by striking “Unless merchandise” and*
14 *inserting “Unless the entry of merchandise is*
15 *covered by an import activity summary state-*
16 *ment, or the merchandise”; and*

17 *(B) by inserting after “by regulation” the*
18 *following: “(but not to exceed 10 working days*
19 *after entry or release, whichever occurs first)”;*
20 *and*

21 *(2) by striking the second and third sentences*
22 *and inserting the following: “If an import activity*
23 *summary statement is filed, the importer of record*
24 *shall deposit estimated duties and fees for entries of*
25 *merchandise covered by the import activity summary*

1 *statement no later than the 15th day of the month fol-*
2 *lowing the month in which the merchandise is entered*
3 *or released, whichever occurs first.”.*

4 **SEC. 457. DEFINITION.**

5 *In this subtitle, the term “customs revenue function”*
6 *means the following:*

7 (1) *Assessing and collecting customs duties (in-*
8 *cluding antidumping and countervailing duties and*
9 *duties imposed under safeguard provisions), excise*
10 *taxes, fees, and penalties due on imported merchan-*
11 *dise, including classifying and valuing merchandise*
12 *for purposes of such assessment.*

13 (2) *Processing and denial of entry of persons,*
14 *baggage, cargo, and mail, with respect to the assess-*
15 *ment and collection of import duties.*

16 (3) *Detecting and apprehending persons engaged*
17 *in fraudulent practices designed to circumvent the*
18 *customs laws of the United States.*

19 (4) *Enforcing section 337 of the Tariff Act of*
20 *1930 and provisions relating to import quotas and*
21 *the marking of imported merchandise, and providing*
22 *Customs Recordations for copyrights, patents, and*
23 *trademarks.*

24 (5) *Collecting accurate import data for compila-*
25 *tion of international trade statistics.*

1 (6) *Enforcing reciprocal trade agreements.*

2 (7) *Functions performed by the following per-*
3 *sonnel, and associated support staff, of the United*
4 *States Customs Service on the day before the effective*
5 *date of this Act: Import Specialists, Entry Special-*
6 *ists, Drawback Specialists, National Import Spe-*
7 *cialist, Fines and Penalties Specialists, attorneys of*
8 *the Office of Regulations and Rulings, Customs Audi-*
9 *tors, International Trade Specialists, Financial Sys-*
10 *tems Specialists.*

11 (8) *Functions performed by the following offices,*
12 *with respect to any function described in any of para-*
13 *graphs (1) through (7), and associated support staff,*
14 *of the United States Customs Service on the day be-*
15 *fore the effective date of this Act: the Office of Infor-*
16 *mation and Technology, the Office of Laboratory*
17 *Services, the Office of the Chief Counsel, the Office of*
18 *Congressional Affairs, the Office of International Af-*
19 *fairs, and the Office of Training and Development.*

20 **SEC. 458. GAO REPORT TO CONGRESS.**

21 *Not later than 3 months after the effective date of this*
22 *Act, the Comptroller General of the United States shall sub-*
23 *mit to the Congress a report that sets forth all trade func-*
24 *tions performed by the executive branch, specifying each*
25 *agency that performs each such function.*

1 **SEC. 459. ALLOCATION OF RESOURCES BY THE SECRETARY.**

2 (a) *IN GENERAL.*—*The Secretary shall ensure that*
 3 *adequate staffing is provided to assure that levels of customs*
 4 *revenue services provided on the day before the effective date*
 5 *of this Act shall continue to be provided.*

6 (b) *NOTIFICATION OF CONGRESS.*—*The Secretary shall*
 7 *notify the Committee on Ways and Means of the House of*
 8 *Representatives and the Committee on Finance of the Sen-*
 9 *ate at least 180 days prior to taking any action which*
 10 *would—*

11 (1) *result in any significant reduction in cus-*
 12 *toms revenue services, including hours of operation,*
 13 *provided at any office within the Department or any*
 14 *port of entry;*

15 (2) *eliminate or relocate any office of the De-*
 16 *partment which provides customs revenue services; or*

17 (3) *eliminate any port of entry.*

18 (c) *DEFINITION.*—*In this section, the term “customs*
 19 *revenue services” means those customs revenue functions de-*
 20 *scribed in paragraphs (1) through (6) and (8) of section*
 21 *457.*

22 **SEC. 460. REPORTS TO CONGRESS.**

23 *The United States Customs Service shall, on and after*
 24 *the effective date of this Act, continue to submit to the Com-*
 25 *mittee on Ways and Means of the House of Representatives*
 26 *and the Committee on Finance of the Senate any report*

1 *required, on the day before such the effective date of this*
 2 *Act, to be so submitted under any provision of law.*

3 **SEC. 461. CUSTOMS USER FEES.**

4 *Section 13031(f) of the Consolidated Omnibus Budget*
 5 *Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—*

6 *(1) in paragraph (1), by striking subparagraph*
 7 *(B) and inserting the following:*

8 *“(B) amounts deposited into the Customs*
 9 *Commercial and Homeland Security Automation*
 10 *Account under paragraph (5).”;*

11 *(2) in paragraph (4), by striking “(other than*
 12 *the excess fees determined by the Secretary under*
 13 *paragraph (5))”;* and

14 *(3) by striking paragraph (5) and inserting the*
 15 *following:*

16 *“(5)(A) There is created within the general fund of the*
 17 *Treasury a separate account that shall be known as the*
 18 *‘Customs Commercial and Homeland Security Automation*
 19 *Account’. In each of fiscal years 2003, 2004, and 2005 there*
 20 *shall be deposited into the Account from fees collected under*
 21 *subsection (a)(9)(A), \$350,000,000.*

22 *“(B) There is authorized to be appropriated from the*
 23 *Account in fiscal years 2003 through 2005 such amounts*
 24 *as are available in that Account for the development, estab-*
 25 *lishment, and implementation of the Automated Commer-*

1 cial Environment computer system for the processing of
 2 merchandise that is entered or released and for other pur-
 3 poses related to the functions of the Department of Home-
 4 land Security. Amounts appropriated pursuant to this sub-
 5 paragraph are authorized to remain available until ex-
 6 pended.

7 “(C) In adjusting the fee imposed by subsection
 8 (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury
 9 shall reduce the amount estimated to be collected in fiscal
 10 year 2006 by the amount by which total fees deposited to
 11 the Account during fiscal years 2003, 2004, and 2005 exceed
 12 total appropriations from that Account.”.

13 **TITLE V—EMERGENCY** 14 **PREPAREDNESS AND RESPONSE**

15 **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPARED-** 16 **NESS AND RESPONSE.**

17 *The Secretary, acting through the Under Secretary for*
 18 *Emergency Preparedness and Response, shall be responsible*
 19 *for the following:*

20 (1) *Helping to ensure the preparedness of emer-*
 21 *gency response providers for terrorist attacks, major*
 22 *disasters, and other emergencies.*

23 (2) *With respect to the Nuclear Incident Re-*
 24 *sponse Team (regardless of whether it is operating as*

1 *an organizational unit of the Department pursuant to*
2 *this title)—*

3 *(A) establishing standards and certifying*
4 *when those standards have been met;*

5 *(B) conducting joint and other exercises and*
6 *training and evaluating performance; and*

7 *(C) providing funds to the Department of*
8 *Energy and the Environmental Protection Agen-*
9 *cy, as appropriate, for homeland security plan-*
10 *ning, exercises and training, and equipment.*

11 *(3) Providing the Federal Government's response*
12 *to terrorist attacks and major disasters, including—*

13 *(A) managing such response;*

14 *(B) directing the Domestic Emergency Sup-*
15 *port Team, the Strategic National Stockpile, the*
16 *National Disaster Medical System, and (when*
17 *operating as an organizational unit of the De-*
18 *partment pursuant to this title) the Nuclear In-*
19 *cident Response Team;*

20 *(C) overseeing the Metropolitan Medical Re-*
21 *sponse System; and*

22 *(D) coordinating other Federal response re-*
23 *sources in the event of a terrorist attack or major*
24 *disaster.*

1 (4) *Aiding the recovery from terrorist attacks*
2 *and major disasters, interventions to treat the psycho-*
3 *logical consequences of terrorist attacks or major dis-*
4 *asters and provision for training for mental health*
5 *workers to allow them to respond effectively to such*
6 *attacks or disasters.*

7 (5) *Building a comprehensive national incident*
8 *management system with Federal, State, and local*
9 *government personnel, agencies, and authorities, to*
10 *respond to such attacks and disasters.*

11 (6) *Consolidating existing Federal Government*
12 *emergency response plans into a single, coordinated*
13 *national response plan.*

14 (7) *Developing comprehensive programs for de-*
15 *veloping interoperative communications technology,*
16 *and helping to ensure that emergency response pro-*
17 *viders acquire such technology.*

18 **SEC. 502. FUNCTIONS TRANSFERRED.**

19 *In accordance with title VIII, there shall be transferred*
20 *to the Secretary the functions, personnel, assets, and obliga-*
21 *tions of the following:*

22 (1) *Except as provided in section 402, the Fed-*
23 *eral Emergency Management Agency, including the*
24 *functions of the Director of the Federal Emergency*
25 *Management Agency relating thereto, and the Inte-*

1 *grated Hazard Information System of the Depart-*
 2 *ment of Defense.*

3 (2) *The Office of Emergency Preparedness, the*
 4 *National Disaster Medical System, and the Metropoli-*
 5 *tan Medical Response System of the Department of*
 6 *Health and Human Services, including the functions*
 7 *of the Secretary of Health and Human Services and*
 8 *the Assistant Secretary for Public Health Emergency*
 9 *Preparedness relating thereto.*

10 (3) *The Strategic National Stockpile of the De-*
 11 *partment of Health and Human Services, including*
 12 *the functions of the Secretary of Health and Human*
 13 *Services relating thereto.*

14 **SEC. 503. NUCLEAR INCIDENT RESPONSE.**

15 (a) *NUCLEAR INCIDENT RESPONSE TEAM.*—*At the di-*
 16 *rection of the Secretary (in connection with an actual or*
 17 *threatened terrorist attack, major disaster, or other emer-*
 18 *gency within the United States), the Nuclear Incident Re-*
 19 *sponse Team shall operate as an organizational unit of the*
 20 *Department. While so operating, the Nuclear Incident Re-*
 21 *sponse Team shall be subject to the direction, authority, and*
 22 *control of the Secretary.*

23 (b) *CONSTRUCTION.*—*Nothing in this title shall be un-*
 24 *derstood to limit the ordinary responsibility of the Sec-*
 25 *retary of Energy and the Administrator of the Environ-*

1 *mental Protection Agency for organizing, training, equip-*
 2 *ping, and utilizing their respective entities in the Nuclear*
 3 *Incident Response Team, or (subject to the provisions of this*
 4 *title) from exercising direction, authority, and control over*
 5 *them when they are not operating as a unit of the Depart-*
 6 *ment.*

7 (c) *INDEMNIFICATION OF CONTRACTORS DURING*
 8 *TRANSITION PERIOD.—(1) To the extent the Department of*
 9 *Energy has a duty under a covered contract to indemnify*
 10 *an element of the Nuclear Incident Response Team, the De-*
 11 *partment and the Department of Energy shall each have*
 12 *that duty, whether or not the Nuclear Incident Response*
 13 *Team is operating as an organizational element of the De-*
 14 *partment.*

15 (2) *Paragraph (1) applies only to a contract in effect*
 16 *on the date of the enactment of this Act, and not to any*
 17 *extension or renewal of such contract carried out after the*
 18 *date of the enactment of this Act.*

19 **SEC. 504. DEFINITION.**

20 *For purposes of this title, the term “Nuclear Incident*
 21 *Response Team” means a resource that includes—*

22 (1) *those entities of the Department of Energy*
 23 *that perform nuclear or radiological emergency sup-*
 24 *port functions (including accident response, search re-*
 25 *sponse, advisory, and technical operations functions),*

1 *radiation exposure functions at the medical assistance*
 2 *facility known as the Radiation Emergency Assist-*
 3 *ance/Training Site (REAC/TS), radiological assist-*
 4 *ance functions, and related functions; and*

5 *(2) those entities of the Environmental Protec-*
 6 *tion Agency that perform radiological emergency re-*
 7 *sponse and support functions.*

8 **SEC. 505. CONDUCT OF CERTAIN PUBLIC-HEALTH RELATED**
 9 **ACTIVITIES.**

10 *(a) IN GENERAL.—With respect to all public health-*
 11 *related activities to improve State, local, and hospital pre-*
 12 *paredness and response to chemical, biological, radiological,*
 13 *and nuclear and other emerging terrorist threats carried out*
 14 *by the Department of Health and Human Services (includ-*
 15 *ing the Public Health Service), the Secretary of Health and*
 16 *Human Services shall set priorities and preparedness goals*
 17 *and further develop a coordinated strategy for such activi-*
 18 *ties in collaboration with the Secretary of Homeland Secu-*
 19 *rity.*

20 *(b) EVALUATION OF PROGRESS.—In carrying out sub-*
 21 *section (a), the Secretary of Health and Human Services*
 22 *shall collaborate with the Secretary of Homeland Security*
 23 *in developing specific benchmarks and outcome measure-*
 24 *ments for evaluating progress toward achieving the prior-*
 25 *ities and goals described in such subsection.*

1 ***TITLE VI—MANAGEMENT***

2 ***SEC. 601. UNDER SECRETARY FOR MANAGEMENT.***

3 *(a) IN GENERAL.—The Secretary, acting through the*
4 *Under Secretary for Management, shall be responsible for*
5 *the management and administration of the Department, in-*
6 *cluding the following:*

7 *(1) The budget, appropriations, expenditures of*
8 *funds, accounting, and finance.*

9 *(2) Procurement.*

10 *(3) Human resources and personnel.*

11 *(4) Information technology and communications*
12 *systems.*

13 *(5) Facilities, property, equipment, and other*
14 *material resources.*

15 *(6) Security for personnel, information tech-*
16 *nology and communications systems, facilities, prop-*
17 *erty, equipment, and other material resources.*

18 *(7) Identification and tracking of performance*
19 *measures relating to the responsibilities of the Depart-*
20 *ment.*

21 *(8) Grants and other assistance management*
22 *programs.*

23 *(9) The transition and reorganization process, to*
24 *ensure an efficient and orderly transfer of functions*

1 *and personnel to the Department, including the devel-*
2 *opment of a transition plan.*

3 *(10) The conduct of internal audits and manage-*
4 *ment analyses of the programs and activities of the*
5 *Department.*

6 *(11) Any other management duties that the Sec-*
7 *retary may designate.*

8 *(b) IMMIGRATION ENFORCEMENT.—*

9 *(1) IN GENERAL.—In addition to the responsibil-*
10 *ities described in subsection (a), the Under Secretary*
11 *for Management shall be responsible for the following:*

12 *(A) Maintenance of all immigration statis-*
13 *tical information of the Bureau of Border Secu-*
14 *rity. Such statistical information shall include*
15 *information and statistics of the type contained*
16 *in the publication entitled “Statistical Yearbook*
17 *of the Immigration and Naturalization Service”*
18 *prepared by the Immigration and Naturaliza-*
19 *tion Service (as in effect immediately before the*
20 *date on which the transfer of functions specified*
21 *under section 411 takes effect), including region-*
22 *by-region statistics on the aggregate number of*
23 *applications and petitions filed by an alien (or*
24 *filed on behalf of an alien) and denied by such*
25 *bureau, and the reasons for such denials,*

1 *disaggregated by category of denial and applica-*
 2 *tion or petition type.*

3 *(B) Establishment of standards of reli-*
 4 *ability and validity for immigration statistics*
 5 *collected by the Bureau of Border Security.*

6 *(2) TRANSFER OF FUNCTIONS.—In accordance*
 7 *with title VIII, there shall be transferred to the Under*
 8 *Secretary for Management all functions performed*
 9 *immediately before such transfer occurs by the Statis-*
 10 *tics Branch of the Office of Policy and Planning of*
 11 *the Immigration and Naturalization Service with re-*
 12 *spect to the following programs:*

13 *(A) The Border Patrol program.*

14 *(B) The detention and removal program.*

15 *(C) The intelligence program.*

16 *(D) The investigations program.*

17 *(E) The inspections program.*

18 **SEC. 602. CHIEF FINANCIAL OFFICER.**

19 *Notwithstanding section 902(a)(1) of title 31, United*
 20 *States Code, the Chief Financial Officer shall report to the*
 21 *Secretary, or to another official of the Department, as the*
 22 *Secretary may direct.*

23 **SEC. 603. CHIEF INFORMATION OFFICER.**

24 *Notwithstanding section 3506(a)(2) of title 44, United*
 25 *States Code, the Chief Information Officer shall report to*

1 *the Secretary, or to another official of the Department, as*
2 *the Secretary may direct.*

3 **SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS**
4 **AND CIVIL LIBERTIES.**

5 *The Secretary shall establish in the Department an Of-*
6 *fice for Civil Rights and Civil Liberties, the head of which*
7 *shall be the Director for Civil Rights and Civil Liberties.*

8 *The Director shall—*

9 *(1) review and assess information alleging*
10 *abuses of civil rights, civil liberties, and racial and*
11 *ethnic profiling by employees and officials of the De-*
12 *partment;*

13 *(2) make public through the Internet, radio, tele-*
14 *vision, or newspaper advertisements information on*
15 *the responsibilities and functions of, and how to con-*
16 *tact, the Office; and*

17 *(3) submit to the President of the Senate, the*
18 *Speaker of the House of Representatives, and the ap-*
19 *propriate committees and subcommittees of the Con-*
20 *gress on a semiannual basis a report on the imple-*
21 *mentation of this section, including the use of funds*
22 *appropriated to carry out this section, and detailing*
23 *any allegations of abuses described in paragraph (1)*
24 *and any actions taken by the Department in response*
25 *to such allegations.*

1 ***TITLE VII—MISCELLANEOUS***
2 ***Subtitle A—Inspector General***

3 ***SEC. 701. AUTHORITY OF THE SECRETARY.***

4 (a) *IN GENERAL.*—Notwithstanding the last two sen-
5 tences of section 3(a) of the Inspector General Act of 1978,
6 the Inspector General shall be under the authority, direc-
7 tion, and control of the Secretary with respect to audits or
8 investigations, or the issuance of subpoenas, that require ac-
9 cess to sensitive information concerning—

10 (1) intelligence, counterintelligence, or
11 counterterrorism matters;

12 (2) ongoing criminal investigations or pro-
13 ceedings;

14 (3) undercover operations;

15 (4) the identity of confidential sources, including
16 protected witnesses;

17 (5) other matters the disclosure of which would,
18 in the Secretary's judgment, constitute a serious
19 threat to the protection of any person or property au-
20 thorized protection by section 3056 of title 18, United
21 States Code, section 202 of title 3 of such Code, or
22 any provision of the Presidential Protection Assist-
23 ance Act of 1976; or

1 (6) *other matters the disclosure of which would,*
2 *in the Secretary's judgment, constitute a serious*
3 *threat to national security.*

4 **(b) PROHIBITION OF CERTAIN INVESTIGATIONS.**—*With*
5 *respect to the information described in subsection (a), the*
6 *Secretary may prohibit the Inspector General from car-*
7 *rying out or completing any audit or investigation, or from*
8 *issuing any subpoena, after such Inspector General has de-*
9 *cided to initiate, carry out, or complete such audit or inves-*
10 *tigation or to issue such subpoena, if the Secretary deter-*
11 *mines that such prohibition is necessary to prevent the dis-*
12 *closure of any information described in subsection (a), to*
13 *preserve the national security, or to prevent a significant*
14 *impairment to the interests of the United States.*

15 **(c) NOTIFICATION REQUIRED.**—*If the Secretary exer-*
16 *cises any power under subsection (a) or (b), the Secretary*
17 *shall notify the Inspector General of the Department in*
18 *writing stating the reasons for such exercise. Within 30*
19 *days after receipt of any such notice, the Inspector General*
20 *shall transmit a copy of such notice and a written response*
21 *thereto that includes (1) a statement as to whether the In-*
22 *spector General agrees or disagrees with such exercise and*
23 *(2) the reasons for any disagreement, to the President of*
24 *the Senate and the Speaker of the House of Representatives*

8 (e) *OVERSIGHT RESPONSIBILITY—The Inspector Gen-*
9 *eral Act of 1978 (5 U.S.C. App.) is amended by inserting*
10 *after section 8I the following:*

13 “SEC. 8J. Notwithstanding any other provision of law,
14 in carrying out the duties and responsibilities specified in
15 this Act, the Inspector General of the Department of Home-
16 land Security shall have oversight responsibility for the in-
17 ternal investigations performed by the Office of Internal Af-
18 fairs of the United States Customs Service and the Office
19 of Inspections of the United States Secret Service. The head
20 of each such office shall promptly report to the Inspector
21 General the significant activities being carried out by such
22 office.”.

1 ***Subtitle B—United States Secret***
 2 ***Service***

3 **SEC. 711. FUNCTIONS TRANSFERRED.**

4 *In accordance with title VIII, there shall be transferred*
 5 *to the Secretary the functions, personnel, assets, and obliga-*
 6 *tions of the United States Secret Service, which shall be*
 7 *maintained as a distinct entity within the Department, in-*
 8 *cluding the functions of the Secretary of the Treasury relat-*
 9 *ing thereto.*

10 ***Subtitle C—Critical Infrastructure***
 11 ***Information***

12 **SEC. 721. SHORT TITLE.**

13 *This subtitle may be cited as the “Critical Infrastruc-*
 14 *ture Information Act of 2002”.*

15 **SEC. 722. DEFINITIONS.**

16 *In this subtitle:*

17 (1) *AGENCY.*—*The term “agency” has the mean-*
 18 *ing given it in section 551 of title 5, United States*
 19 *Code.*

20 (2) *COVERED FEDERAL AGENCY.*—*The term*
 21 *“covered Federal agency” means the Department of*
 22 *Homeland Security.*

23 (3) *CRITICAL INFRASTRUCTURE INFORMATION.*—
 24 *The term “critical infrastructure information” means*
 25 *information not customarily in the public domain*

1 *and related to the security of critical infrastructure or*
2 *protected systems—*

3 *(A) actual, potential, or threatened inter-*
4 *ference with, attack on, compromise of, or inca-*
5 *pacitation of critical infrastructure or protected*
6 *systems by either physical or computer-based at-*
7 *tack or other similar conduct (including the mis-*
8 *use of or unauthorized access to all types of com-*
9 *munications and data transmission systems)*
10 *that violates Federal, State, or local law, harms*
11 *interstate commerce of the United States, or*
12 *threatens public health or safety;*

13 *(B) the ability of any critical infrastructure*
14 *or protected system to resist such interference,*
15 *compromise, or incapacitation, including any*
16 *planned or past assessment, projection, or esti-*
17 *mate of the vulnerability of critical infrastruc-*
18 *ture or a protected system, including security*
19 *testing, risk evaluation thereto, risk management*
20 *planning, or risk audit; or*

21 *(C) any planned or past operational prob-*
22 *lem or solution regarding critical infrastructure*
23 *or protected systems, including repair, recovery,*
24 *reconstruction, insurance, or continuity, to the*

1 *extent it is related to such interference, com-*
2 *promise, or incapacitation.*

3 (4) *CRITICAL INFRASTRUCTURE PROTECTION*
4 *PROGRAM.—The term “critical infrastructure protec-*
5 *tion program” means any component or bureau of a*
6 *covered Federal agency that has been designated by*
7 *the President or any agency head to receive critical*
8 *infrastructure information.*

9 (5) *INFORMATION SHARING AND ANALYSIS ORGA-*
10 *NIZATION.—The term “Information Sharing and*
11 *Analysis Organization” means any formal or infor-*
12 *mal entity or collaboration created or employed by*
13 *public or private sector organizations, for purposes*
14 *of—*

15 (A) *gathering and analyzing critical infra-*
16 *structure information in order to better under-*
17 *stand security problems and interdependencies*
18 *related to critical infrastructure and protected*
19 *systems, so as to ensure the availability, integ-*
20 *rity, and reliability thereof;*

21 (B) *communicating or disclosing critical*
22 *infrastructure information to help prevent, de-*
23 *tect, mitigate, or recover from the effects of a in-*
24 *terference, compromise, or a incapacitation prob-*

1 *lem related to critical infrastructure or protected*
2 *systems; and*

3 *(C) voluntarily disseminating critical infra-*
4 *structure information to its members, State,*
5 *local, and Federal Governments, or any other en-*
6 *tities that may be of assistance in carrying out*
7 *the purposes specified in subparagraphs (A) and*
8 *(B).*

9 *(6) PROTECTED SYSTEM.—The term “protected*
10 *system”—*

11 *(A) means any service, physical or com-*
12 *puter-based system, process, or procedure that di-*
13 *rectly or indirectly affects the viability of a facil-*
14 *ity of critical infrastructure; and*

15 *(B) includes any physical or computer-*
16 *based system, including a computer, computer*
17 *system, computer or communications network, or*
18 *any component hardware or element thereof, soft-*
19 *ware program, processing instructions, or infor-*
20 *mation or data in transmission or storage there-*
21 *in, irrespective of the medium of transmission or*
22 *storage.*

23 *(7) VOLUNTARY.—*

24 *(A) IN GENERAL.—The term “voluntary”,*
25 *in the case of any submittal of critical infra-*

1 *structure information to a covered Federal agen-*
2 *cy, means the submittal thereof in the absence of*
3 *such agency's exercise of legal authority to com-*
4 *pel access to or submission of such information*
5 *and may be accomplished by a single entity or*
6 *an Information Sharing and Analysis Organiza-*
7 *tion on behalf of itself or its members.*

8 (B) *EXCLUSIONS.—The term “voluntary”—*

9 *(i) in the case of any action brought*
10 *under the securities laws as is defined in*
11 *section 3(a)(47) of the Securities Exchange*
12 *Act of 1934 (15 U.S.C. 78c(a)(47))—*

13 *(I) does not include information*
14 *or statements contained in any docu-*
15 *ments or materials filed with the Secu-*
16 *rities and Exchange Commission, or*
17 *with Federal banking regulators, pur-*
18 *suant to section 12(i) of the Securities*
19 *Exchange Act of 1934 (15 U.S.C.*
20 *781(I)); and*

21 *(II) with respect to the submittal*
22 *of critical infrastructure information,*
23 *does not include any disclosure or*
24 *writing that when made accompanied*

1 *the solicitation of an offer or a sale of*
 2 *securities; and*

3 *(ii) does not include information or*
 4 *statements submitted or relied upon as a*
 5 *basis for making licensing or permitting de-*
 6 *terminations, or during regulatory pro-*
 7 *ceedings.*

8 **SEC. 723. DESIGNATION OF CRITICAL INFRASTRUCTURE**
 9 **PROTECTION PROGRAM.**

10 *A critical infrastructure protection program may be*
 11 *designated as such by one of the following:*

12 *(1) The President.*

13 *(2) The Secretary of Homeland Security.*

14 **SEC. 724. PROTECTION OF VOLUNTARILY SHARED CRITICAL**
 15 **INFRASTRUCTURE INFORMATION.**

16 *(a) PROTECTION.—*

17 *(1) IN GENERAL.—Notwithstanding any other*
 18 *provision of law, critical infrastructure information*
 19 *(including the identity of the submitting person or*
 20 *entity) that is voluntarily submitted to a covered Fed-*
 21 *eral agency for use by that agency regarding the secu-*
 22 *rity of critical infrastructure and protected systems,*
 23 *if analysis, warning, interdependency study, recovery,*
 24 *reconstitution, or other informational purpose, when*

1 *accompanied by an express statement specified in*
2 *paragraph (2)—*

3 *(A) shall be exempt from disclosure under*
4 *section 552 of title 5, United States Code (com-*
5 *monly referred to as the Freedom of Information*
6 *Act);*

7 *(B) shall not be subject to any agency rules*
8 *or judicial doctrine regarding ex parte commu-*
9 *nications with a decision making official;*

10 *(C) shall not, without the written consent of*
11 *the person or entity submitting such informa-*
12 *tion, be used directly by such agency, any other*
13 *Federal, State, or local authority, or any third*
14 *party, in any civil action arising under Federal*
15 *or State law if such information is submitted in*
16 *good faith;*

17 *(D) shall not, without the written consent of*
18 *the person or entity submitting such informa-*
19 *tion, be used or disclosed by any officer or em-*
20 *ployee of the United States for purposes other*
21 *than the purposes of this subtitle, except—*

22 *(i) in furtherance of an investigation*
23 *or the prosecution of a criminal act; or*

24 *(ii) when disclosure of the information*
25 *would be—*

1 (I) to either House of Congress, or
2 to the extent of matter within its juris-
3 diction, any committee or sub-
4 committee thereof, any joint committee
5 thereof or subcommittee of any such
6 joint committee; or

7 (II) to the Comptroller General, or
8 any authorized representative of the
9 Comptroller General, in the course of
10 the performance of the duties of the
11 General Accounting Office.

12 (E) shall not, if provided to a State or local
13 government or government agency—

14 (i) be made available pursuant to any
15 State or local law requiring disclosure of
16 information or records;

17 (ii) otherwise be disclosed or distrib-
18 uted to any party by said State or local
19 government or government agency without
20 the written consent of the person or entity
21 submitting such information; or

22 (iii) be used other than for the purpose
23 of protecting critical infrastructure or pro-
24 tected systems, or in furtherance of an in-

1 *vestigation or the prosecution of a criminal*
2 *act; and*

3 *(F) does not constitute a waiver of any ap-*
4 *plicable privilege or protection provided under*
5 *law, such as trade secret protection.*

6 *(2) EXPRESS STATEMENT.—For purposes of*
7 *paragraph (1), the term “express statement”, with re-*
8 *spect to information or records, means—*

9 *(A) in the case of written information or*
10 *records, a written marking on the information or*
11 *records substantially similar to the following:*
12 *“This information is voluntarily submitted to*
13 *the Federal Government in expectation of protec-*
14 *tion from disclosure as provided by the provi-*
15 *sions of the Critical Infrastructure Information*
16 *Act of 2002.”; or*

17 *(B) in the case of oral information, a simi-*
18 *lar written statement submitted within a reason-*
19 *able period following the oral communication.*

20 *(b) LIMITATION.—No communication of critical infra-*
21 *structure information to a covered Federal agency made*
22 *pursuant to this subtitle shall be considered to be an action*
23 *subject to the requirements of the Federal Advisory Com-*
24 *mittee Act (5 U.S.C. App. 2).*

1 (c) *INDEPENDENTLY OBTAINED INFORMATION.*—*Noth-*
2 *ing in this section shall be construed to limit or otherwise*
3 *affect the ability of a State, local, or Federal Government*
4 *entity, agency, or authority, or any third party, under ap-*
5 *plicable law, to obtain critical infrastructure information*
6 *in a manner not covered by subsection (a), including any*
7 *information lawfully and properly disclosed generally or*
8 *broadly to the public and to use such information in any*
9 *manner permitted by law.*

10 (d) *TREATMENT OF VOLUNTARY SUBMITTAL OF IN-*
11 *FORMATION.*—*The voluntary submittal to the Government*
12 *of information or records that are protected from disclosure*
13 *by this subtitle shall not be construed to constitute compli-*
14 *ance with any requirement to submit such information to*
15 *a Federal agency under any other provision of law.*

16 (e) *PROCEDURES.*—

17 (1) *IN GENERAL.*—*The Secretary of the Depart-*
18 *ment of Homeland Security shall, in consultation*
19 *with appropriate representatives of the National Se-*
20 *curity Council and the Office of Science and Tech-*
21 *nology Policy, establish uniform procedures for the re-*
22 *ceipt, care, and storage by Federal agencies of critical*
23 *infrastructure information that is voluntarily sub-*
24 *mitted to the Government. The procedures shall be es-*

1 *tablished not later than 90 days after the date of the*
2 *enactment of this subtitle.*

3 (2) *ELEMENTS.*—*The procedures established*
4 *under paragraph (1) shall include mechanisms*
5 *regarding—*

6 (A) *the acknowledgement of receipt by Fed-*
7 *eral agencies of critical infrastructure informa-*
8 *tion that is voluntarily submitted to the Govern-*
9 *ment;*

10 (B) *the maintenance of the identification of*
11 *such information as voluntarily submitted to the*
12 *Government for purposes of and subject to the*
13 *provisions of this subtitle;*

14 (C) *the care and storage of such informa-*
15 *tion; and*

16 (D) *the protection and maintenance of the*
17 *confidentiality of such information so as to per-*
18 *mit the sharing of such information within the*
19 *Federal Government and with State and local*
20 *governments, and the issuance of notices and*
21 *warnings related to the protection of critical in-*
22 *frastructure and protected systems, in such man-*
23 *ner as to protect from public disclosure the iden-*
24 *tity of the submitting person or entity, or infor-*
25 *mation that is proprietary, business sensitive, re-*

1 *lates specifically to the submitting person or en-*
2 *tity, and is otherwise not appropriately in the*
3 *public domain.*

4 (f) *PENALTIES.*—Whoever, being an officer or employee
5 *of the United States or of any department or agency thereof,*
6 *knowingly publishes, divulges, discloses, or makes known in*
7 *any manner or to any extent not authorized by law, any*
8 *critical infrastructure information protected from disclo-*
9 *sure by this subtitle coming to him in the course of this*
10 *employment or official duties or by reason of any examina-*
11 *tion or investigation made by, or return, report, or record*
12 *made to or filed with, such department or agency or officer*
13 *or employee thereof, shall be fined under title 18 of the*
14 *United States Code, imprisoned not more than one year, or*
15 *both, and shall be removed from office or employment.*

16 (g) *AUTHORITY TO ISSUE WARNINGS.*—The Federal
17 *Government may provide advisories, alerts, and warnings*
18 *to relevant companies, targeted sectors, other governmental*
19 *entities, or the general public regarding potential threats*
20 *to critical infrastructure as appropriate. In issuing a*
21 *warning, the Federal Government shall take appropriate*
22 *actions to protect from disclosure—*

23 (1) *the source of any voluntarily submitted crit-*
24 *ical infrastructure information that forms the basis*
25 *for the warning; or*

1 (2) *information that is proprietary, business sen-*
 2 *sitive, relates specifically to the submitting person or*
 3 *entity, or is otherwise not appropriately in the public*
 4 *domain.*

5 (h) *AUTHORITY TO DELEGATE.—The President may*
 6 *delegate authority to a critical infrastructure protection*
 7 *program, designated under subsection (e), to enter into a*
 8 *voluntary agreement to promote critical infrastructure se-*
 9 *curity, including with any Information Sharing and Anal-*
 10 *ysis Organization, or a plan of action as otherwise defined*
 11 *in section 708 of the Defense Production Act of 1950 (50*
 12 *U.S.C. App. 2158).*

13 **SEC. 725. NO PRIVATE RIGHT OF ACTION.**

14 *Nothing in this subtitle may be construed to create a*
 15 *private right of action for enforcement of any provision of*
 16 *this Act.*

17 ***Subtitle D—Acquisitions***

18 **SEC. 731. RESEARCH AND DEVELOPMENT PROJECTS.**

19 (a) *AUTHORITY.—During the five-year period fol-*
 20 *lowing the effective date of this Act, the Secretary may*
 21 *carry out a pilot program under which the Secretary may*
 22 *exercise the following authorities:*

23 (1)(A) *In carrying out basic, applied, and ad-*
 24 *vanced research and development projects for response*
 25 *to existing or emerging terrorist threats, the Secretary*

1 *may exercise the same authority (subject to the same*
2 *limitations and conditions) with respect to such re-*
3 *search and projects as the Secretary of Defense may*
4 *exercise under section 2371 of title 10, United States*
5 *Code (except for subsections (b) and (f) of such sec-*
6 *tion), after making a determination that—*

7 *(i) the use of a contract, grant, or coopera-*
8 *tive agreement for such projects is not feasible or*
9 *appropriate; and*

10 *(ii) use of other authority to waive Federal*
11 *procurement laws or regulations would not be*
12 *feasible or appropriate to accomplish such*
13 *projects.*

14 *(B) The annual report required under subsection*
15 *(h) of such section 2371, as applied to the Secretary*
16 *by this paragraph, shall be submitted to the President*
17 *of the Senate and the Speaker of the House of Rep-*
18 *resentatives.*

19 *(2)(A) Under the authority of paragraph (1) and*
20 *subject to the limitations of such paragraph, the Sec-*
21 *retary may carry out prototype projects, in accord-*
22 *ance with the requirements and conditions provided*
23 *for carrying out prototype projects under section 845*
24 *of the National Defense Authorization Act for Fiscal*

1 *Year 1994 (Public Law 103–160; 10 U.S.C. 2371*
2 *note).*

3 *(B) In applying the authorities of such section*
4 845—

5 *(i) subsection (c) thereof shall apply with*
6 *respect to prototype projects under this para-*
7 *graph, except that in applying such subsection*
8 *any reference in such subsection to the Comp-*
9 *troller General shall be deemed to refer to the*
10 *Comptroller General and the Inspector General*
11 *of the Department; and*

12 *(ii) the Secretary shall perform the func-*
13 *tions of the Secretary of Defense under subsection*
14 *(d) thereof.*

15 *(b) REPORT.—Not later than one year after the effec-*
16 *tive date of this Act, and annually thereafter, the Comp-*
17 *troller General shall report to the Committee on Govern-*
18 *ment Reform of the House of Representatives and the Com-*
19 *mittee on Governmental Affairs of the Senate on—*

20 *(1) whether use of the authorities described in*
21 *subsection (a) attracts nontraditional Government*
22 *contractors and results in the acquisition of needed*
23 *technologies; and*

1 (2) *if such authorities were to be made perma-*
 2 *nent, whether additional safeguards are needed with*
 3 *respect to the use of such authorities.*

4 (c) *DEFINITION OF NONTRADITIONAL GOVERNMENT*
 5 *CONTRACTOR.—In this section, the term “nontraditional*
 6 *Government contractor” has the same meaning as the term*
 7 *“nontraditional defense contractor” as defined in section*
 8 *845(e) of the National Defense Authorization Act for Fiscal*
 9 *Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).*

10 **SEC. 732. PERSONAL SERVICES.**

11 *The Secretary—*

12 (1) *may procure the temporary or intermittent*
 13 *services of experts or consultants (or organizations*
 14 *thereof) in accordance with section 3109 of title 5,*
 15 *United States Code; and*

16 (2) *may, whenever necessary due to an urgent*
 17 *homeland security need, procure temporary (not to*
 18 *exceed 1 year) or intermittent personal services, in-*
 19 *cluding the services of experts or consultants (or orga-*
 20 *nizations thereof), without regard to the pay limita-*
 21 *tions of such section 3109.*

22 **SEC. 733. SPECIAL STREAMLINED ACQUISITION AUTHOR-**
 23 **ITY.**

24 (a) *AUTHORITY.—(1) The Secretary may use the au-*
 25 *thorities set forth in this section with respect to any pro-*

1 *curement made during the period beginning on the effective*
2 *date of this Act and ending September 30, 2007, if the Sec-*
3 *retary determines in writing that the mission of the Depart-*
4 *ment (as described in section 101) would be seriously im-*
5 *paired without the use of such authorities.*

6 (2) *The authority to make the determination described*
7 *in paragraph (1) may not be delegated by the Secretary*
8 *to an officer of the Department who is not appointed by*
9 *the President with the advice and consent of the Senate.*

10 (3) *Not later than the date that is seven days after*
11 *the date of any determination under paragraph (1), the*
12 *Secretary shall submit to the Committee on Government Re-*
13 *form of the House of Representatives and the Committee*
14 *on Governmental Affairs of the Senate—*

15 (A) *notification of such determination; and*

16 (B) *the justification for such determination.*

17 (b) *INCREASED MICRO-PURCHASE THRESHOLD FOR*
18 *CERTAIN PROCUREMENTS.—(1) The Secretary may des-*
19 *ignate certain employees of the Department to make pro-*
20 *curements described in subsection (a) for which in the ad-*
21 *ministration of section 32 of the Office of Federal Procure-*
22 *ment Policy Act (41 U.S.C. 428) the amount specified in*
23 *subsections (c), (d), and (f) of such section 32 shall be*
24 *deemed to be \$5,000.*

1 (2) *The number of employees designated under para-*
2 *graph (1) shall be—*

3 (A) *fewer than the number of employees of the*
4 *Department who are authorized to make purchases*
5 *without obtaining competitive quotations, pursuant to*
6 *section 32(c) of the Office of Federal Procurement Pol-*
7 *icy Act (41 U.S.C. 428(c));*

8 (B) *sufficient to ensure the geographic dispersal*
9 *of the availability of the use of the procurement au-*
10 *thority under such paragraph at locations reasonably*
11 *considered to be potential terrorist targets; and*

12 (C) *sufficiently limited to allow for the careful*
13 *monitoring of employees designated under such para-*
14 *graph.*

15 (3) *Procurements made under the authority of this*
16 *subsection shall be subject to review by a designated super-*
17 *visor on not less than a monthly basis. The supervisor re-*
18 *sponsible for the review shall be responsible for no more*
19 *than 7 employees making procurements under this sub-*
20 *section.*

21 (c) *SIMPLIFIED ACQUISITION PROCEDURES.—(1) With*
22 *respect to a procurement described in subsection (a), the*
23 *Secretary may deem the simplified acquisition threshold re-*
24 *ferred to in section 4(11) of the Office of Federal Procure-*
25 *ment Policy Act (41 U.S.C. 403(11)) to be \$175,000.*

1 (2) *Section 18(c)(1) of the Office of Federal Procure-*
 2 *ment Policy Act is amended—*

3 (A) *by striking “or” at the end of subparagraph*
 4 *(F);*

5 (B) *by striking the period at the end of subpara-*
 6 *graph (G) and inserting “; or”; and*

7 (C) *by adding at the end the following new sub-*
 8 *paragraph:*

9 “(H) *the procurement is by the Secretary of*
 10 *Homeland Security pursuant to the special proce-*
 11 *dures provided in section 733(c) of the Homeland Se-*
 12 *curity Act of 2002.”.*

13 (d) *APPLICATION OF CERTAIN COMMERCIAL ITEMS*
 14 *AUTHORITIES.—(1) With respect to a procurement de-*
 15 *scribed in subsection (a), the Secretary may deem any item*
 16 *or service to be a commercial item for the purpose of Federal*
 17 *procurement laws.*

18 (2) *The \$5,000,000 limitation provided in section*
 19 *31(a)(2) of the Office of Federal Procurement Policy Act*
 20 *(41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Fed-*
 21 *eral Property and Administrative Services Act of 1949 (41*
 22 *U.S.C. 253(g)(1)(B)) shall be deemed to be \$7,500,000 for*
 23 *purposes of property or services under the authority of this*
 24 *subsection.*

1 (3) *Authority under a provision of law referred to in*
2 *paragraph (2) that expires under section 4202(e) of the*
3 *Clinger-Cohen Act of 1996 (divisions D and E of Public*
4 *Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding*
5 *such section, continue to apply for a procurement described*
6 *in subsection (a).*

7 (e) *REPORT.*—*Not later than 180 days after the end*
8 *of fiscal year 2005, the Comptroller General shall submit*
9 *to the Committee on Governmental Affairs of the Senate*
10 *and the Committee on Government Reform of the House of*
11 *Representatives a report on the use of the authorities pro-*
12 *vided in this section. The report shall contain the following:*

13 (1) *An assessment of the extent to which property*
14 *and services acquired using authorities provided*
15 *under this section contributed to the capacity of the*
16 *Federal workforce to facilitate the mission of the De-*
17 *partment as described in section 101.*

18 (2) *An assessment of the extent to which prices*
19 *for property and services acquired using authorities*
20 *provided under this section reflected the best value.*

21 (3) *The number of employees designated by each*
22 *executive agency under subsection (b)(1).*

23 (4) *An assessment of the extent to which the De-*
24 *partment has implemented subsections (b)(2) and*

1 (b)(3) to monitor the use of procurement authority by
2 employees designated under subsection (b)(1).

3 (5) Any recommendations of the Comptroller
4 General for improving the effectiveness of the imple-
5 mentation of the provisions of this section.

6 **SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.**

7 There is established in the Department an office to be
8 known as the “Office of Small and Disadvantaged Business
9 Utilization”. The management of such office shall be vested
10 in the manner described in section 15(k) of the Small Busi-
11 ness Act (15 U.S.C. 644(k)) and shall carry out the func-
12 tions described in such section.

13 **Subtitle E—Property**

14 **SEC. 741. DEPARTMENT HEADQUARTERS.**

15 (a) *IN GENERAL.*—Subject to the requirements of the
16 Public Buildings Act of 1959 (40 U.S.C. 601 et seq.), the
17 Administrator of General Services shall construct a public
18 building to serve as the headquarters for the Department.

19 (b) *LOCATION AND CONSTRUCTION STANDARDS.*—The
20 headquarters facility shall be constructed to such standards
21 and specifications and at such a location as the Adminis-
22 trator of General Services decides. In selecting a site for
23 the headquarters facility, the Administrator shall give pref-
24 erence to parcels of land that are federally owned.

1 (c) *USE OF HEADQUARTERS FACILITY.*—*The Adminis-*
 2 *trator of General Services shall make the headquarter facil-*
 3 *ity, as well as other Government-owned or leased facilities,*
 4 *available to the Secretary pursuant to the Administrator’s*
 5 *authorities under section 210 of the Federal Property and*
 6 *Administrative Services Act of 1949 (40 U.S.C. 490 et seq.)*
 7 *and there is authorized to be appropriated to the Secretary*
 8 *such amounts as may be necessary to pay the annual*
 9 *charges for General Services Administration furnished*
 10 *space and services.*

11 ***Subtitle F—Support Anti-terrorism***
 12 ***by Fostering Effective Tech-***
 13 ***nologies Act of 2002 (the SAFE-***
 14 ***TY Act)***

15 ***SEC. 751. SHORT TITLE.***

16 *This subtitle may be cited as the “Support Anti-ter-*
 17 *rorism by Fostering Effective Technologies Act of 2002” or*
 18 *the “SAFETY Act”.*

19 ***SEC. 752. ADMINISTRATION.***

20 (a) *IN GENERAL.*—*The Secretary shall be responsible*
 21 *for the administration of this subtitle.*

22 (b) *DESIGNATION OF QUALIFIED ANTI-TERRORISM*
 23 *TECHNOLOGIES.*—*The Secretary may designate anti-ter-*
 24 *rorism technologies that qualify for protection under the*
 25 *system of risk management set forth in this subtitle in ac-*

1 cordance with criteria that shall include, but not be limited
2 to, the following:

3 (1) *Prior and extensive United States govern-*
4 *ment use and demonstrated substantial utility and ef-*
5 *fectiveness.*

6 (2) *Availability of the technology for immediate*
7 *deployment in public and private settings.*

8 (3) *Existence of extraordinarily large or extraor-*
9 *dinarily unquantifiable potential third party liability*
10 *risk exposure to the Seller or other provider of such*
11 *anti-terrorism technology.*

12 (4) *Substantial likelihood that such anti-ter-*
13 *rorism technology will not be deployed unless protec-*
14 *tions under the system of risk management provided*
15 *under this subtitle are extended.*

16 (5) *Magnitude of risk exposure to the public if*
17 *such anti-terrorism technology is not deployed.*

18 (6) *evaluation of all scientific studies that can be*
19 *feasibly conducted in order to assess the capability of*
20 *the technology to substantially reduce risks of harm.*

21 (c) *REGULATIONS.—The Secretary may issue such reg-*
22 *ulations, after notice and comment in accordance with sec-*
23 *tion 553 of title 5, United States, Code, as may be necessary*
24 *to carry out this subtitle.*

1 **SEC. 753. LITIGATION MANAGEMENT.**

2 (a) *FEDERAL CAUSE OF ACTION.*—(1) *There shall exist*
3 *a Federal cause of action for claims arising out of, relating*
4 *to, or resulting from an act of terrorism when qualified*
5 *anti-terrorism technologies have been deployed in defense*
6 *against such act and such claims result or may result in*
7 *loss to the Seller. The substantive law for decision in any*
8 *such action shall be derived from the law, including choice*
9 *of law principles, of the State in which such acts of ter-*
10 *rorism occurred, unless such law is inconsistent with or pre-*
11 *empted by Federal law.*

12 (2) *Such appropriate district court of the United*
13 *States shall have original and exclusive jurisdiction over*
14 *all actions for any claim for loss of property, personal in-*
15 *jury, or death arising out of, relating to, or resulting from*
16 *an act of terrorism when qualified anti-terrorism tech-*
17 *nologies have been deployed in defense against such act and*
18 *such claims result or may result in loss to the Seller.*

19 (b) *SPECIAL RULES.*—*In an action brought under this*
20 *section for damages the following provisions apply:*

21 (1) *No punitive damages intended to punish or*
22 *deter, exemplary damages, or other damages not in-*
23 *tended to compensate a plaintiff for actual losses may*
24 *be awarded, nor shall any party be liable for interest*
25 *prior to the judgment.*

1 (2)(A) Noneconomic damages may be awarded
2 against a defendant only in an amount directly pro-
3 portional to the percentage of responsibility of such
4 defendant for the harm to the plaintiff, and no plain-
5 tiff may recover noneconomic damages unless the
6 plaintiff suffered physical harm.

7 (B) For purposes of subparagraph (A), the term
8 “noneconomic damages” means damages for losses for
9 physical and emotional pain, suffering, inconven-
10 ience, physical impairment, mental anguish, dis-
11 figurement, loss of enjoyment of life, loss of society
12 and companionship, loss of consortium, hedonic dam-
13 ages, injury to reputation, and any other nonpecu-
14 niary losses.

15 (c) COLLATERAL SOURCES.—Any recovery by a plain-
16 tiff in an action under this section shall be reduced by the
17 amount of collateral source compensation, if any, that the
18 plaintiff has received or is entitled to receive as a result
19 of such acts of terrorism that result or may result in loss
20 to the Seller.

21 (d) GOVERNMENT CONTRACTOR DEFENSE.—(1)
22 Should a product liability lawsuit be filed for claims aris-
23 ing out of, relating to, or resulting from an act of terrorism
24 when qualified anti-terrorism technologies approved by the
25 Secretary, as provided in paragraphs (2) and (3) of this

1 subsection, have been deployed in defense against such act
2 and such claims result or may result in loss to the Seller,
3 there shall be a rebuttable presumption that the government
4 contractor defense applies in such lawsuit. This presump-
5 tion shall only be overcome by evidence showing that the
6 Seller acted fraudulently or with willful misconduct in sub-
7 mitting information to the Secretary during the course of
8 the Secretary's consideration of such technology under this
9 subsection. This presumption of the government contractor
10 defense shall apply regardless of whether the claim against
11 the Seller arises from a sale of the product to Federal Gov-
12 ernment or non-Federal Government customers.

13 (2) The Secretary will be exclusively responsible for the
14 review and approval of anti-terrorism technology for pur-
15 poses of establishing a government contractor defense in any
16 product liability lawsuit for claims arising out of, relating
17 to, or resulting from an act of terrorism when qualified
18 anti-terrorism technologies approved by the Secretary, as
19 provided in this paragraph and paragraph (3), have been
20 deployed in defense against such act and such claims result
21 or may result in loss to the Seller. Upon the Seller's submis-
22 sion to the Secretary for approval of anti-terrorism tech-
23 nology, the Secretary will conduct a comprehensive review
24 of the design of such technology and determine whether it
25 will perform as intended, conforms to the Seller's specifica-

1 tions, and is safe for use as intended. The Seller will con-
 2 duct safety and hazard analyses on such technology and
 3 will supply the Secretary with all such information.

4 (3) For those products reviewed and approved by the
 5 Secretary, the Secretary will issue a certificate of conform-
 6 ance to the Seller and place the product on an Approved
 7 Product List for Homeland Security.

8 (e) *EXCLUSION.*—Nothing in this section shall in any
 9 way limit the ability of any person to seek any form of
 10 recovery from any person, government, or other entity
 11 that—

12 (1) attempts to commit, knowingly participates
 13 in, aids and abets, or commits any act of terrorism,
 14 or any criminal act related to or resulting from such
 15 act of terrorism; or

16 (2) participates in a conspiracy to commit any
 17 such act of terrorism or any such criminal act.

18 **SEC. 754. RISK MANAGEMENT.**

19 (a) *IN GENERAL.*—(1) Any person or entity that sells
 20 or otherwise provides a qualified anti-terrorism technology
 21 to non-federal government customers (“Seller”) shall obtain
 22 liability insurance of such types and in such amounts as
 23 shall be required in accordance with this section to satisfy
 24 otherwise compensable third-party claims arising out of, re-
 25 lating to, or resulting from an act of terrorism when quali-

1 *fied anti-terrorism technologies have been deployed in de-*
 2 *fense against such act.*

3 (2) *For the total claims related to one such act of ter-*
 4 *rorism, the Seller is not required to obtain liability insur-*
 5 *ance of more than the maximum amount of liability insur-*
 6 *ance reasonably available from private sources on the world*
 7 *market at prices and terms that will not unreasonably dis-*
 8 *tort the sales price of Seller's anti-terrorism technologies.*

9 (3) *Liability insurance obtained pursuant to this sub-*
 10 *section shall, in addition to the Seller, protect the following,*
 11 *to the extent of their potential liability for involvement in*
 12 *the manufacture, qualification, sale, use, or operation of*
 13 *qualified anti-terrorism technologies deployed in defense*
 14 *against an act of terrorism:*

15 (A) *contractors, subcontractors, suppliers, ven-*
 16 *dors and customers of the Seller.*

17 (B) *contractors, subcontractors, suppliers, and*
 18 *vendors of the customer.*

19 (4) *Such liability insurance under this section shall*
 20 *provide coverage against third party claims arising out of,*
 21 *relating to, or resulting from the sale or use of anti-ter-*
 22 *rorism technologies.*

23 (b) *RECIPROCAL WAIVER OF CLAIMS.—The Seller shall*
 24 *enter into a reciprocal waiver of claims with its contractors,*
 25 *subcontractors, suppliers, vendors and customers, and con-*

1 tractors and subcontractors of the customers, involved in the
 2 manufacture, sale, use or operation of qualified anti-ter-
 3 rorism technologies, under which each party to the waiver
 4 agrees to be responsible for losses, including business inter-
 5 ruption losses, that it sustains, or for losses sustained by
 6 its own employees resulting from an activity resulting from
 7 an act of terrorism when qualified anti-terrorism tech-
 8 nologies have been deployed in defense against such act.

9 (c) *EXTENT OF LIABILITY.*—Notwithstanding any
 10 other provision of law, liability for all claims against a
 11 Seller arising out of, relating to, or resulting from an act
 12 of terrorism when qualified anti-terrorism technologies have
 13 been deployed in defense against such act and such claims
 14 result or may result in loss to the Seller, whether for com-
 15 pensatory or punitive damages or for contribution or in-
 16 demnity, shall not be in an amount greater than the limits
 17 of liability insurance coverage required to be maintained
 18 by the Seller under this section.

19 **SEC. 755. DEFINITIONS.**

20 For purposes of this subtitle, the following definitions
 21 apply:

22 (1) *QUALIFIED ANTI-TERRORISM TECHNOLOGY.*—

23 For purposes of this subtitle, the term “qualified anti-
 24 terrorism technology” means any product, device, or
 25 technology designed, developed, or modified for the

1 *specific purpose of preventing, detecting, identifying,*
2 *or deterring acts of terrorism and limiting the harm*
3 *such acts might otherwise cause, that is designated as*
4 *such by the Secretary.*

5 (2) *ACT OF TERRORISM.*—(A) *The term “act of*
6 *terrorism” means any act that the Secretary deter-*
7 *mines meets the requirements under subparagraph*
8 *(B), as such requirements are further defined and*
9 *specified by the Secretary.*

10 (B) *REQUIREMENTS.*—*An act meets the require-*
11 *ments of this subparagraph if the act—*

12 (i) *is unlawful;*

13 (ii) *causes harm to a person, property, or*
14 *entity, in the United States, or in the case of a*
15 *domestic United States air carrier or a United*
16 *States-flag vessel (or a vessel based principally*
17 *in the United States on which United States in-*
18 *come tax is paid and whose insurance coverage*
19 *is subject to regulation in the United States), in*
20 *or outside the United States; and*

21 (iii) *uses or attempts to use instrumental-*
22 *ities, weapons or other methods designed or in-*
23 *tended to cause mass destruction, injury or other*
24 *loss to citizens or institutions of the United*
25 *States.*

1 (3) *INSURANCE CARRIER.*—*The term “insurance*
2 *carrier” means any corporation, association, society,*
3 *order, firm, company, mutual, partnership, indi-*
4 *vidual aggregation of individuals, or any other legal*
5 *entity that provides commercial property and cas-*
6 *ualty insurance. Such term includes any affiliates of*
7 *a commercial insurance carrier.*

8 (4) *LIABILITY INSURANCE.*—

9 (A) *IN GENERAL.*—*The term “liability in-*
10 *surance” means insurance for legal liabilities in-*
11 *curred by the insured resulting from—*

12 (i) *loss of or damage to property of*
13 *others;*

14 (ii) *ensuing loss of income or extra ex-*
15 *pense incurred because of loss of or damage*
16 *to property of others;*

17 (iii) *bodily injury (including) to per-*
18 *sons other than the insured or its employees;*
19 *or*

20 (iv) *loss resulting from debt or default*
21 *of another.*

22 (5) *LOSS.*—*The term “loss” means death, bodily*
23 *injury, or loss of or damage to property, including*
24 *business interruption loss.*

1 (6) *NON-FEDERAL GOVERNMENT CUSTOMERS.*—
 2 *The term “non-Federal Government customers” means*
 3 *any customer of a Seller that is not an agency or in-*
 4 *strumentality of the United States Government with*
 5 *authority under Public Law 85-804 to provide for in-*
 6 *demnification under certain circumstances for third-*
 7 *party claims against its contractors, including but*
 8 *not limited to State and local authorities and com-*
 9 *mercial entities.*

10 ***Subtitle G—Other Provisions***

11 ***SEC. 761. ESTABLISHMENT OF HUMAN RESOURCES MAN-*** 12 ***AGEMENT SYSTEM.***

13 (a) *AUTHORITY.*—

14 (1) *IN GENERAL.*—*Subpart I of part III of title*
 15 *5, United States Code, is amended by adding at the*
 16 *end the following:*

17 ***“CHAPTER 97—DEPARTMENT OF HOMELAND*** 18 ***SECURITY***

“Sec.

“9701. *Establishment of human resources management system.*

19 ***“§9701. Establishment of human resources manage-*** 20 ***ment system***

21 “(a) *IN GENERAL.*—*Notwithstanding any other provi-*
 22 *sion of this title, the Secretary of Homeland Security may,*
 23 *in regulations prescribed jointly with the Director of the*
 24 *Office of Personnel Management, establish, and from time*

1 *to time adjust, a human resources management system for*
2 *some or all of the organizational units of the Department*
3 *of Homeland Security.*

4 “(b) *SYSTEM REQUIREMENTS.—Any system estab-*
5 *lished under subsection (a) shall—*

6 “(1) *be flexible;*

7 “(2) *be contemporary;*

8 “(3) *not waive, modify, or otherwise affect—*

9 “(A) *the public employment principles of*
10 *merit and fitness set forth in section 2301, in-*
11 *cluding the principles of hiring based on merit,*
12 *fair treatment without regard to political affili-*
13 *ation or other non-merit considerations, equal*
14 *pay for equal work, and protection of employees*
15 *against reprisal for whistleblowing;*

16 “(B) *any provision of section 2302, relating*
17 *to prohibited personnel practices;*

18 “(C)(i) *any provision of law referred to in*
19 *section 2302(b)(1); or*

20 “(ii) *any provision of law implementing*
21 *any provision of law referred to in section*
22 *2302(b)(1) by—*

23 “(I) *providing for equal employment*
24 *opportunity through affirmative action; or*

1 “(II) providing any right or remedy
2 available to any employee or applicant for
3 employment in the civil service;

4 “(D) any other provision of this title (as de-
5 scribed in subsection (c)); or

6 “(E) any rule or regulation prescribed
7 under any provision of law referred to in any of
8 the preceding subparagraphs of this paragraph;

9 “(4) ensure that employees may organize, bar-
10 gain collectively, and participate through labor orga-
11 nizations of their own choosing in decisions which af-
12 fect them, subject to any exclusion from coverage or
13 limitation on negotiability established by law or
14 under subsection (a) for employees engaged in intel-
15 ligence, counterintelligence, investigative, or security
16 work which directly affects national security; and

17 “(5) permit the use of a category rating system
18 for evaluating applicants for positions in the competi-
19 tive service.

20 “(c) OTHER NONWAIVABLE PROVISIONS.—The other
21 provisions of this title, as referred to in subsection
22 (b)(3)(D), are (to the extent not otherwise specified in sub-
23 paragraph (A), (B), (C), or (D) of subsection (b)(3))—

24 “(1) subparts A, B, E, G, and H of this part;
25 and

1 “(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and
2 79, and this chapter.

3 “(d) *LIMITATIONS RELATING TO PAY.*—Nothing in
4 this section shall constitute authority—

5 “(1) to modify the pay of any employee who
6 serves in—

7 “(A) an *Executive Schedule* position under
8 subchapter II of chapter 53 of title 5, United
9 States Code; or

10 “(B) a position for which the rate of basic
11 pay is fixed in statute by reference to a section
12 or level under subchapter II of chapter 53 of such
13 title 5;

14 “(2) to fix pay for any employee or position at
15 an annual rate greater than the maximum amount of
16 cash compensation allowable under section 5307 of
17 such title 5 in a year; or

18 “(3) to exempt any employee from the applica-
19 tion of such section 5307.

20 “(e) *SUNSET PROVISION.*—Effective 5 years after the
21 date of the enactment of this section, all authority to issue
22 regulations under this section (including regulations which
23 would modify, supersede, or terminate any regulations pre-
24 viously issued under this section) shall cease to be avail-
25 able.”.

1 (2) *CLERICAL AMENDMENT.*—*The table of chap-*
 2 *ters for part III of title 5, United States Code, is*
 3 *amended by adding at the end the following:*

“97. Department of Homeland Security 9701”.

4 (b) *EFFECT ON PERSONNEL.*—

5 (1) *NON-SEPARATION OR NON-REDUCTION IN*
 6 *GRADE OR COMPENSATION OF FULL-TIME PERSONNEL*
 7 *AND PART-TIME PERSONNEL HOLDING PERMANENT*
 8 *POSITIONS.*—*Except as otherwise provided in this*
 9 *Act, the transfer pursuant to this Act of full-time per-*
 10 *sonnel (except special Government employees) and*
 11 *part-time personnel holding permanent positions shall*
 12 *not cause any such employee to be separated or re-*
 13 *duced in grade or compensation for one year after the*
 14 *date of transfer to the Department.*

15 (2) *POSITIONS COMPENSATED IN ACCORDANCE*
 16 *WITH EXECUTIVE SCHEDULE.*—*Any person who, on*
 17 *the day preceding such person’s date of transfer pur-*
 18 *suant to this Act, held a position compensated in ac-*
 19 *cordance with the Executive Schedule prescribed in*
 20 *chapter 53 of title 5, United States Code, and who,*
 21 *without a break in service, is appointed in the De-*
 22 *partment to a position having duties comparable to*
 23 *the duties performed immediately preceding such ap-*
 24 *pointment shall continue to be compensated in such*
 25 *new position at not less than the rate provided for*

1 *such previous position, for the duration of the service*
2 *of such person in such new position.*

3 (3) *COORDINATION RULE.—Any exercise of au-*
4 *thority under chapter 97 of title 5, United States*
5 *Code (as amended by subsection (a)), including under*
6 *any system established under such chapter, shall be in*
7 *conformance with the requirements of this subsection.*

8 **SEC. 762. ADVISORY COMMITTEES.**

9 *The Secretary may establish, appoint members of, and*
10 *use the services of, advisory committees, as the Secretary*
11 *may deem necessary. An advisory committee established*
12 *under this section may be exempted by the Secretary from*
13 *Public Law 92–463, but the Secretary shall publish notice*
14 *in the Federal Register announcing the establishment of*
15 *such a committee and identifying its purpose and member-*
16 *ship. Notwithstanding the preceding sentence, members of*
17 *an advisory committee that is exempted by the Secretary*
18 *under the preceding sentence who are special Government*
19 *employees (as that term is defined in section 202 of title*
20 *18, United States Code) shall be eligible for certifications*
21 *under subsection (b)(3) of section 208 of title 18, United*
22 *States Code, for official actions taken as a member of such*
23 *advisory committee.*

1 **SEC. 763. REORGANIZATION; TRANSFER OF APPROPRIA-**
2 **TIONS.**

3 (a) *REORGANIZATION.*—

4 (1) *IN GENERAL.*—*The Secretary may allocate or*
5 *reallocate functions among the officers of the Depart-*
6 *ment, and may establish, consolidate, alter, or dis-*
7 *continue organizational units within the Department,*
8 *but only—*

9 (A) *pursuant to section 802; or*

10 (B) *after the expiration of 60 days after*
11 *providing notice of such action to the appro-*
12 *priate congressional committees, which shall in-*
13 *clude an explanation of the rationale for the ac-*
14 *tion.*

15 (2) *LIMITATIONS.*—(A) *Authority under para-*
16 *graph (1)(A) does not extend to the abolition of any*
17 *agency, entity, organizational unit, program, or func-*
18 *tion established or required to be maintained by this*
19 *Act.*

20 (B) *Authority under paragraph (1)(B) does not*
21 *extend to the abolition of any agency, entity, organi-*
22 *zational unit, program, or function established or re-*
23 *quired to be maintained by statute.*

24 (b) *TRANSFER OF APPROPRIATIONS.*—

25 (1) *IN GENERAL.*—*Except as otherwise specifi-*
26 *cally provided by law, not to exceed two percent of*

1 *any appropriation available to the Secretary in any*
2 *fiscal year may be transferred between such appro-*
3 *priations, except that not less than 15 days' notice*
4 *shall be given to the Committees on Appropriations of*
5 *the Senate and House of Representatives before any*
6 *such transfer is made.*

7 (2) *EXPIRATION OF AUTHORITY.—The authority*
8 *under paragraph (1) shall expire two years after the*
9 *date of enactment of this Act.*

10 **SEC. 764. MISCELLANEOUS AUTHORITIES.**

11 (a) *SEAL.—The Department shall have a seal, whose*
12 *design is subject to the approval of the President.*

13 (b) *GIFTS, DEVISES, AND BEQUESTS.—With respect to*
14 *the Department, the Secretary shall have the same authori-*
15 *ties that the Attorney General has with respect to the De-*
16 *partment of Justice under section 524(d) of title 28, United*
17 *States Code.*

18 (c) *PARTICIPATION OF MEMBERS OF THE ARMED*
19 *FORCES.—With respect to the Department, the Secretary*
20 *shall have the same authorities that the Secretary of Trans-*
21 *portation has with respect to the Department of Transpor-*
22 *tation under section 324 of title 49, United States Code.*

23 (d) *REDELEGATION OF FUNCTIONS.—Unless otherwise*
24 *provided in the delegation or by law, any function delegated*
25 *under this Act may be redelegated to any subordinate.*

1 **SEC. 765. MILITARY ACTIVITIES.**

2 *Nothing in this Act shall confer upon the Secretary*
3 *any authority to engage in warfighting, the military de-*
4 *fense of the United States, or other military activities, nor*
5 *shall anything in this Act limit the existing authority of*
6 *the Department of Defense or the Armed Forces to engage*
7 *in warfighting, the military defense of the United States,*
8 *or other military activities.*

9 **SEC. 766. REGULATORY AUTHORITY.**

10 *Except as otherwise provided in this Act, this Act vests*
11 *no new regulatory authority in the Secretary or any other*
12 *Federal official, and transfers to the Secretary or another*
13 *Federal official only such regulatory authority as exists on*
14 *the date of enactment of this Act within any agency, pro-*
15 *gram, or function transferred to the Department pursuant*
16 *to this Act, or that on such date of enactment is exercised*
17 *by another official of the executive branch with respect to*
18 *such agency, program, or function. Any such transferred*
19 *authority may not be exercised by an official from whom*
20 *it is transferred upon transfer of such agency, program, or*
21 *function to the Secretary or another Federal official pursu-*
22 *ant to this Act. This Act may not be construed as altering*
23 *or diminishing the regulatory authority of any other execu-*
24 *tive agency, except to the extent that this Act transfers such*
25 *authority from the agency.*

1 **SEC. 767. PROVISIONS REGARDING TRANSFERS FROM DE-**
2 **PARTMENT OF ENERGY.**

3 (a) *SEPARATE CONTRACTING.*—*To the extent that pro-*
4 *grams or activities transferred by this Act from the Depart-*
5 *ment of Energy to the Department of Homeland Security*
6 *are being carried out through contracts with the operator*
7 *of a national laboratory of the Department of Energy, the*
8 *Secretary of Homeland Security and the Secretary of En-*
9 *ergy shall ensure that contracts for such programs and ac-*
10 *tivities between the Department of Homeland Security and*
11 *such operator are separate from the contracts of the Depart-*
12 *ment of Energy with such operator.*

13 (b) *HOMELAND SECURITY CENTER.*—(1) *Notwith-*
14 *standing section 307, the Secretary, acting through the*
15 *Under Secretary for Science and Technology, shall establish*
16 *at a national security laboratory of the National Nuclear*
17 *Security Administration, a center to serve as the primary*
18 *location for carrying out research, development, test, and*
19 *evaluation activities of the Department related to the goals*
20 *described in section 301(6)(A) and (B). The Secretary shall*
21 *establish, in concurrence with the Secretary of Energy, such*
22 *additional centers at one or more national laboratories of*
23 *the Department of Energy as the Secretary considers appro-*
24 *priate to serve as secondary locations for carrying out such*
25 *activities.*

1 (2) *Each center established under paragraph (1) shall*
2 *be composed of such facilities and assets as are required*
3 *for the performance of such activities. The particular facili-*
4 *ties and assets shall be designated and transferred by the*
5 *Secretary of Energy with the concurrence of the Secretary.*

6 (c) *REIMBURSEMENT OF COSTS.—In the case of an ac-*
7 *tivity carried out by the operator of a national laboratory*
8 *of the Department of Energy but under contract with the*
9 *Department of Homeland Security, the Department of*
10 *Homeland Security shall reimburse the Department of En-*
11 *ergy for costs of such activity through a method under which*
12 *the Secretary of Energy waives any requirement for the De-*
13 *partment of Homeland Security to pay administrative*
14 *charges or personnel costs of the Department of Energy or*
15 *its contractors in excess of the amount that the Secretary*
16 *of Energy pays for an activity carried out by such con-*
17 *tractor and paid for by the Department of Energy.*

18 (d) *LABORATORY DIRECTED RESEARCH AND DEVEL-*
19 *OPMENT BY THE DEPARTMENT OF ENERGY.—No funds au-*
20 *thorized to be appropriated or otherwise made available to*
21 *the Department in any fiscal year may be obligated or ex-*
22 *pended for laboratory directed research and development ac-*
23 *tivities carried out by the Department of Energy unless*
24 *such activities support the mission of the Department de-*
25 *scribed in section 101.*

1 (e) *DEPARTMENT OF ENERGY COORDINATION ON*
2 *HOMELAND SECURITY RELATED RESEARCH.*—*The Sec-*
3 *retary of Energy shall ensure that any research, develop-*
4 *ment, test, and evaluation activities conducted within the*
5 *Department of Energy that are directly or indirectly related*
6 *to homeland security are fully coordinated with the Sec-*
7 *retary to minimize duplication of effort and maximize the*
8 *effective application of Federal budget resources.*

9 **SEC. 768. COUNTERNARCOTICS OFFICER.**

10 *The Secretary shall appoint a senior official in the De-*
11 *partment to assume primary responsibility for coordi-*
12 *nating policy and operations within the Department and*
13 *between the Department and other Federal departments and*
14 *agencies with respect to interdicting the entry of illegal*
15 *drugs into the United States, and tracking and severing*
16 *connections between illegal drug trafficking and terrorism.*

17 **SEC. 769. OFFICE OF INTERNATIONAL AFFAIRS.**

18 (a) *ESTABLISHMENT.*—*There is established within the*
19 *Office of the Secretary an Office of International Affairs.*
20 *The Office shall be headed by a Director, who shall be a*
21 *senior official appointed by the Secretary.*

22 (b) *DUTIES OF THE DIRECTOR.*—*The Director shall*
23 *have the following duties:*

24 (1) *To promote information and education ex-*
25 *change with nations friendly to the United States in*

1 order to promote sharing of best practices and tech-
2 nologies relating to homeland security. Such informa-
3 tion exchange shall include the following:

4 (A) Joint research and development on
5 countermeasures.

6 (B) Joint training exercises of first respond-
7 ers.

8 (C) Exchange of expertise on terrorism pre-
9 vention, response, and crisis management.

10 (2) To identify areas for homeland security in-
11 formation and training exchange where the United
12 States has a demonstrated weakness and another
13 friendly nation or nations have a demonstrated exper-
14 tise.

15 (3) To plan and undertake international con-
16 ferences, exchange programs, and training activities.

17 (4) To manage international activities within
18 the Department in coordination with other Federal
19 officials with responsibility for counter-terrorism
20 matters.

21 **SEC. 770. PROHIBITION OF THE TERRORISM INFORMATION**
22 **AND PREVENTION SYSTEM.**

23 Any and all activities of the Federal Government to
24 implement the proposed component program of the Citizen

1 Corps known as Operation TIPS (Terrorism Information
2 and Prevention System) are hereby prohibited.

3 **SEC. 771. REVIEW OF PAY AND BENEFIT PLANS.**

4 Notwithstanding any other provision of this Act, the
5 Secretary shall, in consultation with the Director of the Of-
6 fice of Personnel Management, review the pay and benefit
7 plans of each agency whose functions are transferred under
8 this Act to the Department and, within 90 days after the
9 date of enactment, submit a plan to the President of the
10 Senate and the Speaker of the House of Representatives and
11 the appropriate committees and subcommittees of the Con-
12 gress, for ensuring, to the maximum extent practicable, the
13 elimination of disparities in pay and benefits throughout
14 the Department, especially among law enforcement per-
15 sonnel, that are inconsistent with merit system principles
16 set forth in section 2301 of title 5, United States Code.

17 **SEC. 772. ROLE OF THE DISTRICT OF COLUMBIA.**

18 The Secretary (or the Secretary's designee) shall work
19 in cooperation with the Mayor of the District of Columbia
20 (or the Mayor's designee) for the purpose of integrating the
21 District of Columbia into the planning, coordination, and
22 execution of the activities of the Federal Government for the
23 enhancement of domestic preparedness against the con-
24 sequences of terrorist attacks.

1 **SEC. 773. TRANSFER OF THE FEDERAL LAW ENFORCEMENT**
 2 **TRAINING CENTER.**

3 *There shall be transferred to the Attorney General the*
 4 *functions, personnel, assets, and liabilities of the Federal*
 5 *Law Enforcement Training Center, including any func-*
 6 *tions of the Secretary of the Treasury relating thereto.*

7 **TITLE VIII—TRANSITION**
 8 **Subtitle A—Reorganization Plan**

9 **SEC. 801. DEFINITIONS.**

10 *For purposes of this title:*

11 *(1) The term “agency” includes any entity, orga-*
 12 *nizational unit, program, or function.*

13 *(2) The term “transition period” means the 12-*
 14 *month period beginning on the effective date of this*
 15 *Act.*

16 **SEC. 802. REORGANIZATION PLAN.**

17 *(a) SUBMISSION OF PLAN.—Not later than 60 days*
 18 *after the date of the enactment of this Act, the President*
 19 *shall transmit to the appropriate congressional committees*
 20 *a reorganization plan regarding the following:*

21 *(1) The transfer of agencies, personnel, assets,*
 22 *and obligations to the Department pursuant to this*
 23 *Act.*

24 *(2) Any consolidation, reorganization, or stream-*
 25 *lining of agencies transferred to the Department pur-*
 26 *suant to this Act.*

1 (b) *PLAN ELEMENTS.*—*The plan transmitted under*
2 *subsection (a) shall contain, consistent with this Act, such*
3 *elements as the President deems appropriate, including the*
4 *following:*

5 (1) *Identification of any functions of agencies*
6 *transferred to the Department pursuant to this Act*
7 *that will not be transferred to the Department under*
8 *the plan.*

9 (2) *Specification of the steps to be taken by the*
10 *Secretary to organize the Department, including the*
11 *delegation or assignment of functions transferred to*
12 *the Department among officers of the Department in*
13 *order to permit the Department to carry out the func-*
14 *tions transferred under the plan.*

15 (3) *Specification of the funds available to each*
16 *agency that will be transferred to the Department as*
17 *a result of transfers under the plan.*

18 (4) *Specification of the proposed allocations*
19 *within the Department of unexpended funds trans-*
20 *ferred in connection with transfers under the plan.*

21 (5) *Specification of any proposed disposition of*
22 *property, facilities, contracts, records, and other assets*
23 *and obligations of agencies transferred under the*
24 *plan.*

1 (6) *Specification of the proposed allocations*
2 *within the Department of the functions of the agencies*
3 *and subdivisions that are not related directly to se-*
4 *curing the homeland.*

5 (c) *MODIFICATION OF PLAN.—The President may, on*
6 *the basis of consultations with the appropriate congres-*
7 *sional committees, modify or revise any part of the plan*
8 *until that part of the plan becomes effective in accordance*
9 *with subsection (d).*

10 (d) *EFFECTIVE DATE.—*

11 (1) *IN GENERAL.—The reorganization plan de-*
12 *scribed in this section, including any modifications or*
13 *revisions of the plan under subsection (d), shall be-*
14 *come effective for an agency on the earlier of—*

15 (A) *the date specified in the plan (or the*
16 *plan as modified pursuant to subsection (d)), ex-*
17 *cept that such date may not be earlier than 90*
18 *days after the date the President has transmitted*
19 *the reorganization plan to the appropriate con-*
20 *gressional committees pursuant to subsection (a);*
21 *or*

22 (B) *the end of the transition period.*

23 (2) *STATUTORY CONSTRUCTION.—Nothing in this*
24 *subsection may be construed to require the transfer of*

1 *functions, personnel, records, balances of appropri-*
2 *tions, or other assets of an agency on a single date.*

3 (3) *SUPERSEDES EXISTING LAW.—Paragraph (1)*
4 *shall apply notwithstanding section 905(b) of title 5,*
5 *United States Code.*

6 ***Subtitle B—Transitional Provisions***

7 ***SEC. 811. TRANSITIONAL AUTHORITIES.***

8 (a) *PROVISION OF ASSISTANCE BY OFFICIALS.—Until*
9 *the transfer of an agency to the Department, any official*
10 *having authority over or functions relating to the agency*
11 *immediately before the effective date of this Act shall pro-*
12 *vide to the Secretary such assistance, including the use of*
13 *personnel and assets, as the Secretary may request in pre-*
14 *paring for the transfer and integration of the agency into*
15 *the Department.*

16 (b) *SERVICES AND PERSONNEL.—During the transi-*
17 *tion period, upon the request of the Secretary, the head of*
18 *any executive agency may, on a reimbursable basis, provide*
19 *services or detail personnel to assist with the transition.*

20 (c) *TRANSFER OF FUNDS.—Until the transfer of an*
21 *agency to the Department, the President is authorized to*
22 *transfer to the Secretary to fund the purposes authorized*
23 *in this Act—*

24 (1) *for administrative expenses related to the es-*
25 *tablishment of the Department of Homeland Security,*

1 *not to exceed two percent of the unobligated balance*
2 *of any appropriation enacted prior to October 1,*
3 *2002, available to such agency; and*

4 *(2) for purposes for which the funds were appro-*
5 *priated, not to exceed three percent of the unobligated*
6 *balance of any appropriation available to such agen-*
7 *cy;*

8 *except that not less than 15 days' notice shall be given to*
9 *the Committees on Appropriations of the House of Rep-*
10 *resentatives and the Senate before any such funds transfer*
11 *is made.*

12 *(d) ACTING OFFICIALS.—(1) During the transition pe-*
13 *riod, pending the advice and consent of the Senate to the*
14 *appointment of an officer required by this Act to be ap-*
15 *pointed by and with such advice and consent, the President*
16 *may designate any officer whose appointment was required*
17 *to be made by and with such advice and consent and who*
18 *was such an officer immediately before the effective date of*
19 *this Act (and who continues in office) or immediately before*
20 *such designation, to act in such office until the same is filled*
21 *as provided in this Act. While so acting, such officers shall*
22 *receive compensation at the higher of—*

23 *(A) the rates provided by this Act for the respec-*
24 *tive offices in which they act; or*

1 (B) the rates provided for the offices held at the
2 time of designation.

3 (2) Nothing in this Act shall be understood to require
4 the advice and consent of the Senate to the appointment
5 by the President to a position in the Department of any
6 officer whose agency is transferred to the Department pur-
7 suant to this Act and whose duties following such transfer
8 are germane to those performed before such transfer.

9 (e) *TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS,*
10 *AND FUNCTIONS.*—Upon the transfer of an agency to the
11 Department—

12 (1) the personnel, assets, and obligations held by
13 or available in connection with the agency shall be
14 transferred to the Secretary for appropriate alloca-
15 tion, subject to the approval of the Director of the Of-
16 fice of Management and Budget and in accordance
17 with the provisions of section 1531(a)(2) of title 31,
18 United States Code; and

19 (2) the Secretary shall have all functions relating
20 to the agency that any other official could by law ex-
21 ercise in relation to the agency immediately before
22 such transfer, and shall have in addition all functions
23 vested in the Secretary by this Act or other law.

24 Paragraph (1) shall not apply to appropriations trans-
25 ferred pursuant to section 763(b).

1 (f) *PROHIBITION ON USE OF TRANSPORTATION TRUST*
2 *FUNDS.*—

3 (1) *IN GENERAL.*—*Notwithstanding any other*
4 *provision of this Act, no funds derived from the High-*
5 *way Trust Fund, Airport and Airway Trust Fund,*
6 *Inland Waterway Trust Fund, Harbor Maintenance*
7 *Trust Fund, or Oil Spill Liability Trust Fund may*
8 *be transferred to, made available to, or obligated by*
9 *the Secretary or any other official in the Department.*

10 (2) *LIMITATION.*—*This subsection shall not*
11 *apply to security-related funds provided to the Fed-*
12 *eral Aviation Administration for fiscal years pre-*
13 *ceding fiscal year 2003 for (A) operations, (B) facili-*
14 *ties and equipment, or (C) research, engineering, and*
15 *development.*

16 **SEC. 812. SAVINGS PROVISIONS.**

17 (a) *COMPLETED ADMINISTRATIVE ACTIONS.*—(1)
18 *Completed administrative actions of an agency shall not be*
19 *affected by the enactment of this Act or the transfer of such*
20 *agency to the Department, but shall continue in effect ac-*
21 *cording to their terms until amended, modified, superseded,*
22 *terminated, set aside, or revoked in accordance with law*
23 *by an officer of the United States or a court of competent*
24 *jurisdiction, or by operation of law.*

1 (2) *For purposes of paragraph (1), the term “com-*
2 *pleted administrative action” includes orders, determina-*
3 *tions, rules, regulations, personnel actions, permits, agree-*
4 *ments, grants, contracts, certificates, licenses, registrations,*
5 *and privileges.*

6 (b) *PENDING PROCEEDINGS.—Subject to the authority*
7 *of the Secretary under this Act—*

8 (1) *pending proceedings in an agency, including*
9 *notices of proposed rulemaking, and applications for*
10 *licenses, permits, certificates, grants, and financial*
11 *assistance, shall continue notwithstanding the enact-*
12 *ment of this Act or the transfer of the agency to the*
13 *Department, unless discontinued or modified under*
14 *the same terms and conditions and to the same extent*
15 *that such discontinuance could have occurred if such*
16 *enactment or transfer had not occurred; and*

17 (2) *orders issued in such proceedings, and ap-*
18 *peals therefrom, and payments made pursuant to*
19 *such orders, shall issue in the same manner and on*
20 *the same terms as if this Act had not been enacted or*
21 *the agency had not been transferred, and any such or-*
22 *ders shall continue in effect until amended, modified,*
23 *superseded, terminated, set aside, or revoked by an of-*
24 *ficer of the United States or a court of competent ju-*
25 *risdiction, or by operation of law.*

1 (c) *PENDING CIVIL ACTIONS.*—*Subject to the authority*
2 *of the Secretary under this Act, pending civil actions shall*
3 *continue notwithstanding the enactment of this Act or the*
4 *transfer of an agency to the Department, and in such civil*
5 *actions, proceedings shall be had, appeals taken, and judg-*
6 *ments rendered and enforced in the same manner and with*
7 *the same effect as if such enactment or transfer had not*
8 *occurred.*

9 (d) *REFERENCES.*—*References relating to an agency*
10 *that is transferred to the Department in statutes, Executive*
11 *orders, rules, regulations, directives, or delegations of au-*
12 *thority that precede such transfer or the effective date of*
13 *this Act shall be deemed to refer, as appropriate, to the De-*
14 *partment, to its officers, employees, or agents, or to its cor-*
15 *responding organizational units or functions. Statutory re-*
16 *porting requirements that applied in relation to such an*
17 *agency immediately before the effective date of this Act shall*
18 *continue to apply following such transfer if they refer to*
19 *the agency by name.*

20 (e) *EMPLOYMENT PROVISIONS.*—(1) *Notwithstanding*
21 *the generality of the foregoing (including subsections (a)*
22 *and (d)), in and for the Department the Secretary may,*
23 *in regulations prescribed jointly with the Director of the*
24 *Office of Personnel Management, adopt the rules, proce-*
25 *dures, terms, and conditions, established by statute, rule,*

1 *or regulation before the effective date of this Act, relating*
2 *to employment in any agency transferred to the Depart-*
3 *ment pursuant to this Act; and*

4 *(2) except as otherwise provided in this Act, or under*
5 *authority granted by this Act, the transfer pursuant to this*
6 *Act of personnel shall not alter the terms and conditions*
7 *of employment, including compensation, of any employee*
8 *so transferred.*

9 **SEC. 813. TERMINATIONS.**

10 *Except as otherwise provided in this Act, whenever all*
11 *the functions vested by law in any agency have been trans-*
12 *ferred pursuant to this Act, each position and office the in-*
13 *cumbent of which was authorized to receive compensation*
14 *at the rates prescribed for an office or position at level II,*
15 *III, IV, or V, of the Executive Schedule, shall terminate.*

16 **SEC. 814. INCIDENTAL TRANSFERS.**

17 *The Director of the Office of Management and Budget,*
18 *in consultation with the Secretary, is authorized and di-*
19 *rected to make such additional incidental dispositions of*
20 *personnel, assets, and obligations held, used, arising from,*
21 *available, or to be made available, in connection with the*
22 *functions transferred by this Act, as the Director may deem*
23 *necessary to accomplish the purposes of this Act.*

1 **SEC. 815. NATIONAL IDENTIFICATION SYSTEM NOT AU-**
2 **THORIZED.**

3 *Nothing in this Act shall be construed to authorize the*
4 *development of a national identification system or card.*

5 **SEC. 816. CONTINUITY OF INSPECTOR GENERAL OVER-**
6 **SIGHT.**

7 *Notwithstanding the transfer of an agency to the De-*
8 *partment pursuant to this Act, the Inspector General that*
9 *exercised oversight of such agency prior to such transfer*
10 *shall continue to exercise oversight of such agency during*
11 *the period of time, if any, between the transfer of such agen-*
12 *cy to the Department pursuant to this Act and the appoint-*
13 *ment of the Inspector General of the Department of Home-*
14 *land Security in accordance with section 103(b) of this Act.*

15 **SEC. 817. REFERENCE.**

16 *With respect to any function transferred by or under*
17 *this Act (including under a reorganization plan that be-*
18 *comes effective under section 802) and exercised on or after*
19 *the effective date of this Act, reference in any other Federal*
20 *law to any department, commission, or agency or any offi-*
21 *cer or office the functions of which are so transferred shall*
22 *be deemed to refer to the Secretary, other official, or compo-*
23 *nent of the Department to which such function is so trans-*
24 *ferred.*

1 **TITLE IX—CONFORMING AND** 2 **TECHNICAL AMENDMENTS**

3 **SEC. 901. INSPECTOR GENERAL ACT OF 1978.**

4 *Section 11 of the Inspector General Act of 1978 (Public*
 5 *Law 95–452) is amended—*

6 *(1) by inserting “Homeland Security,” after*
 7 *“Transportation,” each place it appears; and*

8 *(2) by striking “; and” each place it appears in*
 9 *paragraph (1) and inserting “;”;*

10 **SEC. 902. EXECUTIVE SCHEDULE.**

11 *(a) IN GENERAL.—Title 5, United States Code, is*
 12 *amended—*

13 *(1) in section 5312, by inserting “Secretary of*
 14 *Homeland Security.” as a new item after “Affairs.”;*

15 *(2) in section 5313, by inserting “Deputy Sec-*
 16 *retary of Homeland Security.” as a new item after*
 17 *“Affairs.”;*

18 *(3) in section 5314, by inserting “Under Secre-*
 19 *taries, Department of Homeland Security.” as a new*
 20 *item after “Affairs.” the third place it appears;*

21 *(4) in section 5315, by inserting “Assistant Sec-*
 22 *retaries, Department of Homeland Security.”, “Gen-*
 23 *eral Counsel, Department of Homeland Security.”,*
 24 *“Chief Financial Officer, Department of Homeland*
 25 *Security.”, “Chief Information Officer, Department of*

1 *Homeland Security.*”, and “*Inspector General, De-*
 2 *partment of Homeland Security.*” as new items after
 3 “*Affairs.*” the first place it appears; and

4 (5) in section 5315, by striking “*Commissioner*
 5 *of Immigration and Naturalization, Department of*
 6 *Justice.*”.

7 (b) *SPECIAL EFFECTIVE DATE.*—Notwithstanding sec-
 8 tion 4, the amendment made by subsection (a)(5) shall take
 9 effect on the date on which the transfer of functions specified
 10 under section 411 takes effect.

11 **SEC. 903. UNITED STATES SECRET SERVICE.**

12 (a) *IN GENERAL.*—(1) *The United States Code is*
 13 *amended in section 202 of title 3, and in section 3056 of*
 14 *title 18, by striking “of the Treasury”, each place it appears*
 15 *and inserting “of Homeland Security”.*

16 (2) *Section 208 of title 3, United States Code, is*
 17 *amended by striking “of Treasury” each place it appears*
 18 *and inserting “of Homeland Security”.*

19 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 20 *section shall take effect on the date of transfer of the United*
 21 *States Secret Service to the Department.*

22 **SEC. 904. COAST GUARD.**

23 (a) *TITLE 14, U.S.C.*—*Title 14, United States Code,*
 24 *is amended in sections 1, 3, 53, 95, 145, 516, 666, 669,*
 25 *673, 673a (as redesignated by subsection (e)(1)), 674, 687,*

1 *and 688 by striking “of Transportation” each place it ap-*
 2 *pears and inserting “of Homeland Security”.*

3 (b) *TITLE 10, U.S.C.—(1) Title 10, United States*
 4 *Code, is amended in sections 101(9), 130b(a), 130b(c)(4),*
 5 *130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e),*
 6 *651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e),*
 7 *888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a),*
 8 *1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c),*
 9 *1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090,*
 10 *1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149,*
 11 *1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a),*
 12 *1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510,*
 13 *1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1),*
 14 *2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a),*
 15 *2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a),*
 16 *2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a),*
 17 *5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a),*
 18 *10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b),*
 19 *12103(b), 12103(d), 12304, 12311(c), 12522(c),*
 20 *12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a),*
 21 *16301(g), and 18501 by striking “of Transportation” each*
 22 *place it appears and inserting “of Homeland Security”.*

23 (2) *Section 801(1) of such title is amended by striking*
 24 *“the General Counsel of the Department of Transportation”*
 25 *and inserting “an official designated to serve as Judge Ad-*

1 *vocate General of the Coast Guard by the Secretary of*
 2 *Homeland Security”.*

3 (3) *Section 983(d)(2)(B) of such title is amended by*
 4 *striking “Department of Transportation” and inserting*
 5 *“Department of Homeland Security”.*

6 (4) *Section 2665(b) of such title is amended by striking*
 7 *“Department of Transportation” and inserting “Depart-*
 8 *ment in which the Coast Guard is operating”.*

9 (5) *Section 7045 of such title is amended—*

10 (A) *in subsections (a)(1) and (b), by striking*
 11 *“Secretaries of the Army, Air Force, and Transpor-*
 12 *tation” both places it appears and inserting “Sec-*
 13 *retary of the Army, the Secretary of the Air Force,*
 14 *and the Secretary of Homeland Security”; and*

15 (B) *in subsection (b), by striking “Department of*
 16 *Transportation” and inserting “Department of*
 17 *Homeland Security”.*

18 (6) *Section 7361(b) of such title is amended in the sub-*
 19 *section heading by striking “TRANSPORTATION” and insert-*
 20 *ing “HOMELAND SECURITY”.*

21 (7) *Section 12522(c) of such title is amended in the*
 22 *subsection heading by striking “TRANSPORTATION” and in-*
 23 *serting “HOMELAND SECURITY”.*

24 (c) *TITLE 37, U.S.C.—Title 37, United States Code,*
 25 *is amended in sections 101(5), 204(i)(4), 301a(a)(3),*

1 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e),
 2 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d),
 3 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1),
 4 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b),
 5 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by
 6 striking “of Transportation” each place it appears and in-
 7 serting “of Homeland Security”.

8 (d) *OTHER DEFENSE-RELATED LAWS*.—(1) Section
 9 363 of Public Law 104–193 (110 Stat. 2247) is amended—

10 (A) in subsection (a)(1) (10 U.S.C. 113 note), by
 11 striking “of Transportation” and inserting “of Home-
 12 land Security”; and

13 (B) in subsection (b)(1) (10 U.S.C. 704 note), by
 14 striking “of Transportation” and inserting “of Home-
 15 land Security”.

16 (2) Section 721(1) of Public Law 104–201 (10 U.S.C.
 17 1073 note) is amended by striking “of Transportation” and
 18 inserting “of Homeland Security”.

19 (3) Section 4463(a) of Public Law 102–484 (10 U.S.C.
 20 1143a note) is amended by striking “after consultation with
 21 the Secretary of Transportation”.

22 (4) Section 4466(h) of Public Law 102–484 (10 U.S.C.
 23 1143 note) is amended by striking “of Transportation” and
 24 inserting “of Homeland Security”.

1 (5) *Section 542(d) of Public Law 103–337 (10 U.S.C.*
2 *1293 note) is amended by striking “of Transportation” and*
3 *inserting “of Homeland Security”.*

4 (6) *Section 740 of Public Law 106–181 (10 U.S.C.*
5 *2576 note) is amended in subsections (b)(2), (c), and (d)(1)*
6 *by striking “of Transportation” each place it appears and*
7 *inserting “of Homeland Security”.*

8 (7) *Section 1407(b)(2) of the Defense Dependents’ Edu-*
9 *cation Act of 1978 (20 U.S.C. 926(b)) is amended by strik-*
10 *ing “of Transportation” both places it appears and insert-*
11 *ing “of Homeland Security”.*

12 (8) *Section 2301(5)(D) of the Elementary and Sec-*
13 *ondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is*
14 *amended by striking “of Transportation” and inserting “of*
15 *Homeland Security”.*

16 (9) *Section 2307(a) of of the Elementary and Sec-*
17 *ondary Education Act of 1965 (20 U.S.C. 6677(a)) is*
18 *amended by striking “of Transportation” and inserting “of*
19 *Homeland Security”.*

20 (10) *Section 1034(a) of Public Law 105–85 (21 U.S.C.*
21 *1505a(a)) is amended by striking “of Transportation” and*
22 *inserting “of Homeland Security”.*

23 (11) *The Military Selective Service Act is amended—*

1 (A) in section 4(a) (50 U.S.C. App. 454(a)), by
2 striking “of Transportation” in the fourth paragraph
3 and inserting “of Homeland Security”;

4 (B) in section 4(b) (50 U.S.C. App. 454(b)), by
5 striking “of Transportation” both places it appears
6 and inserting “of Homeland Security”;

7 (C) in section 6(d)(1) (50 U.S.C. App.
8 456(d)(1)), by striking “of Transportation” both
9 places it appears and inserting “of Homeland Secu-
10 rity”;

11 (D) in section 9(c) (50 U.S.C. App. 459(c)), by
12 striking “Secretaries of Army, Navy, Air Force, or
13 Transportation” and inserting “Secretary of a mili-
14 tary department, and the Secretary of Homeland Se-
15 curity with respect to the Coast Guard,”; and

16 (E) in section 15(e) (50 U.S.C. App. 465(e)), by
17 striking “of Transportation” both places it appears
18 and inserting “of Homeland Security”.

19 (e) *TECHNICAL CORRECTION.*—(1) Title 14, United
20 States Code, is amended by redesignating section 673 (as
21 added by section 309 of Public Law 104–324) as section
22 673a.

23 (2) The table of sections at the beginning of chapter
24 17 of such title is amended by redesignating the item relat-
25 ing to such section as section 673a.

1 (f) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section (other than subsection (e)) shall take effect on the*
 3 *date of transfer of the Coast Guard to the Department.*

4 ***SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALL-***
 5 ***POX VACCINE DEVELOPMENT.***

6 (a) *IN GENERAL.*—*Section 121 of the Public Health*
 7 *Security and Bioterrorism Preparedness and Response Act*
 8 *of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is*
 9 *amended—*

10 (1) *in subsection (a)(1)—*

11 (A) *by striking “Secretary of Health and*
 12 *Human Services” and inserting “Secretary of*
 13 *Homeland Security”;*

14 (B) *by inserting “the Secretary of Health*
 15 *and Human Services and” between “in coordi-*
 16 *nation with” and “the Secretary of Veterans Af-*
 17 *fairs”;* and

18 (C) *by inserting “of Health and Human*
 19 *Services” after “as are determined by the Sec-*
 20 *retary”;* and

21 (2) *in subsections (a)(2) and (b), by inserting*
 22 *“of Health and Human Services” after “Secretary”*
 23 *each place it appears.*

24 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 25 *section shall take effect on the date of transfer of the Stra-*

1 *tegic National Stockpile of the Department of Health and*
 2 *Human Services to the Department.*

3 **SEC. 906. BIOLOGICAL AGENT REGISTRATION; PUBLIC**
 4 **HEALTH SERVICE ACT.**

5 *(a) PUBLIC HEALTH SERVICE ACT.—Section 351A of*
 6 *the Public Health Service Act (42 U.S.C. 262a) is*
 7 *amended—*

8 *(1) in subsection (a)(1)(A), by inserting “(as de-*
 9 *finied in subsection (l)(9))” after “Secretary”;*

10 *(2) in subsection (h)(2)(A), by inserting “De-*
 11 *partment of Homeland Security, the” before “Depart-*
 12 *ment of Health and Human Services”; and*

13 *(3) in subsection (l), by inserting after para-*
 14 *graph (8) a new paragraph as follows:*

15 *“(9) The term ‘Secretary’ means the Secretary of*
 16 *Homeland Security, in consultation with the Sec-*
 17 *retary of Health and Human Services.”.*

18 *(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM*
 19 *PREPAREDNESS AND RESPONSE ACT OF 2002.—Section*
 20 *201(b) of the Public Health Security and Bioterrorism Pre-*
 21 *paredness and Response Act of 2002 (Public Law 107–188;*
 22 *42 U.S.C. 262a note) is amended by striking “Secretary*
 23 *of Health and Human Services” and inserting “Secretary*
 24 *of Homeland Security”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall take effect on the date of transfer of the select*
 3 *agent registration enforcement programs and activities of*
 4 *the Department of Health and Human Services to the De-*
 5 *partment.*

6 **SEC. 907. TRANSFER OF CERTAIN SECURITY AND LAW EN-**
 7 **FORCEMENT FUNCTIONS AND AUTHORITIES.**

8 (a) *AMENDMENT TO PROPERTY ACT.*—*Section*
 9 *210(a)(2) of the Federal Property and Administrative Serv-*
 10 *ices Act of 1949 (40 U.S.C. 490(a)(2)) is repealed.*

11 (b) *LAW ENFORCEMENT AUTHORITY.*—*The Act of June*
 12 *1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat. 281)*
 13 *is amended to read as follows:*

14 **“SECTION 1. SHORT TITLE.**

15 *“This Act may be cited as the ‘Protection of Public*
 16 *Property Act’.*

17 **“SEC. 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY**
 18 **OF HOMELAND SECURITY FOR PROTECTION**
 19 **OF PUBLIC PROPERTY.**

20 *“(a) IN GENERAL.*—*The Secretary of Homeland Secu-*
 21 *rity (in this Act referred to as the ‘Secretary’) shall protect*
 22 *the buildings, grounds, and property that are owned, occu-*
 23 *pled, or secured by the Federal Government (including any*
 24 *agency, instrumentality, or wholly owned or mixed-owner-*
 25 *ship corporation thereof) and the persons on the property.*

1 “(b) *OFFICERS AND AGENTS.*—

2 “(1) *DESIGNATION.*—*The Secretary may des-*
3 *ignat**e employees of the Department of Homeland Se-*
4 *curity, including employees transferred to the Depart-*
5 *ment from the Office of the Federal Protective Service*
6 *of the General Services Administration pursuant to*
7 *the Homeland Security Act of 2002, as officers and*
8 *agents for duty in connection with the protection of*
9 *property owned or occupied by the Federal Govern-*
10 *ment and persons on the property, including duty in*
11 *areas outside the property to the extent necessary to*
12 *protect the property and persons on the property.*

13 “(2) *POWERS.*—*While engaged in the perform-*
14 *ance of official duties, an officer or agent designated*
15 *under this subsection may—*

16 “(A) *enforce Federal laws and regulations*
17 *for the protection of persons and property;*

18 “(B) *carry firearms;*

19 “(C) *make arrests without a warrant for*
20 *any offense against the United States committed*
21 *in the presence of the officer or agent or for any*
22 *felony cognizable under the laws of the United*
23 *States if the officer or agent has reasonable*
24 *grounds to believe that the person to be arrested*
25 *has committed or is committing a felony;*

1 “(D) serve warrants and subpoenas issued
2 under the authority of the United States; and

3 “(E) conduct investigations, on and off the
4 property in question, of offenses that may have
5 been committed against property owned or occu-
6 pied by the Federal Government or persons on
7 the property.

8 “(F) carry out such other activities for the
9 promotion of homeland security as the Secretary
10 may prescribe.

11 “(c) REGULATIONS.—

12 “(1) IN GENERAL.—The Secretary, in consulta-
13 tion with the Administrator of General Services, may
14 prescribe regulations necessary for the protection and
15 administration of property owned or occupied by the
16 Federal Government and persons on the property. The
17 regulations may include reasonable penalties, within
18 the limits prescribed in paragraph (2), for violations
19 of the regulations. The regulations shall be posted and
20 remain posted in a conspicuous place on the property.

21 “(2) PENALTIES.—A person violating a regula-
22 tion prescribed under this subsection shall be fined
23 under title 18, United States Code, imprisoned for not
24 more than 30 days, or both.

25 “(d) DETAILS.—

1 “(1) *REQUESTS OF AGENCIES.*—*On the request*
2 *of the head of a Federal agency having charge or con-*
3 *trol of property owned or occupied by the Federal*
4 *Government, the Secretary may detail officers and*
5 *agents designated under this section for the protection*
6 *of the property and persons on the property.*

7 “(2) *APPLICABILITY OF REGULATIONS.*—*The Sec-*
8 *retary may—*

9 “(A) *extend to property referred to in para-*
10 *graph (1) the applicability of regulations pre-*
11 *scribed under this section and enforce the regula-*
12 *tions as provided in this section; or*

13 “(B) *utilize the authority and regulations of*
14 *the requesting agency if agreed to in writing by*
15 *the agencies.*

16 “(3) *FACILITIES AND SERVICES OF OTHER AGEN-*
17 *CIES.*—*When the Secretary determines it to be eco-*
18 *nomical and in the public interest, the Secretary may*
19 *utilize the facilities and services of Federal, State,*
20 *and local law enforcement agencies, with the consent*
21 *of the agencies.*

22 “(e) *AUTHORITY OUTSIDE FEDERAL PROPERTY.*—*For*
23 *the protection of property owned or occupied by the Federal*
24 *Government and persons on the property, the Secretary*
25 *may enter into agreements with Federal agencies and with*

1 *State and local governments to obtain authority for officers*
 2 *and agents designated under this section to enforce Federal*
 3 *laws and State and local laws concurrently with other Fed-*
 4 *eral law enforcement officers and with State and local law*
 5 *enforcement officers.*

6 “(f) *SECRETARY AND ATTORNEY GENERAL AP-*
 7 *PROVAL.—The powers granted to officers and agents des-*
 8 *ignated under this section shall be exercised in accordance*
 9 *with guidelines approved by the Secretary and the Attorney*
 10 *General.*

11 “(g) *LIMITATION ON STATUTORY CONSTRUCTION.—*
 12 *Nothing in this section shall be construed to—*

13 “(1) *preclude or limit the authority of any Fed-*
 14 *eral law enforcement agency; or*

15 “(2) *restrict the authority of the Administrator*
 16 *of General Services to promulgate regulations affect-*
 17 *ing property under the Administrator’s custody and*
 18 *control.”.*

19 **SEC. 908. TRANSPORTATION SECURITY REGULATIONS.**

20 *Title 49, United States Code, is amended—*

21 (1) *in section 114(l)(2)(B), by inserting “for a*
 22 *period not to exceed 30 days” after “effective”; and*

23 (2) *in section 114(l)(2)(B), by inserting “ratified*
 24 *or” after “unless”.*

1 **SEC. 909. RAILROAD SECURITY LAWS.**

2 *Title 49, United States Code, is amended—*

3 *(1) in section 20106 by inserting in the second*
4 *sentence, “, including security,” after “railroad safe-*
5 *ty” and “or the Secretary of Homeland Security”*
6 *after “Secretary of Transportation”; and*

7 *(2) in section 20105—*

8 *(A) by inserting “or the Secretary of Home-*
9 *land Security” after “Secretary of Transpor-*
10 *tation” in subsection (a);*

11 *(B) by inserting “of Transportation or the*
12 *Secretary of Homeland Security” after “issued*
13 *by the Secretary” in subsection (a);*

14 *(C) by inserting “of Transportation or the*
15 *Secretary of Homeland Security, as appro-*
16 *priate,” after “to the Secretary” in subsection*
17 *(a), and after “Secretary” in subsection*
18 *(b)(1)(A)(iii) and (B)(iv), the first place it ap-*
19 *pears in subsections (b)(1)(B) and (B)(iii) and*
20 *(d), each place it appears in subsections (c)(1),*
21 *(c)(2), (e), and (f), and the first four times it ap-*
22 *pears in subsection (b)(3);*

23 *(D) by inserting “of Transportation or the*
24 *Secretary of Homeland Security, as appro-*
25 *priate” after “Secretary” in subsection*
26 *(b)(1)(A)(ii), (b)(1)(B)(ii), the second place it*

1 appears in subsection (b)(1)(B)(iii), and the last
2 place it appears in subsection (b)(3);

3 (E) in subsection (d), by replacing “Sec-
4 retary’s” with “Secretary of Transportation’s”
5 and adding before the period at the end “or the
6 Secretary of Homeland Security’s duties under
7 section 114”; and

8 (F) in subsection (f), by adding before the
9 period at the end “or section 114”.

10 **SEC. 910. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.**

11 *The National Science and Technology Policy, Organi-*
12 *zation, and Priorities Act of 1976 is amended—*

13 (1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)),
14 by inserting “homeland security,” after “national se-
15 curity,”; and

16 (2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)),
17 by inserting “the Office of Homeland Security,” after
18 “National Security Council,”.

19 **SEC. 911. NATIONAL OCEANOGRAPHIC PARTNERSHIP PRO-**
20 **GRAM.**

21 Section 7902(b) of title 10, United States Code, is
22 amended by adding at the end the following new para-
23 graphs:

24 “(13) *The Under Secretary for Science and Tech-*
25 *nology of the Department of Homeland Security.*

1 “(14) Other Federal officials the Council con-
2 siders appropriate.”.

3 **SEC. 912. CHIEF FINANCIAL OFFICER.**

4 Section 901(b)(1) of title 31, United States Code, is
5 amended—

6 (1) by redesignating subparagraphs (G) through
7 (P) as subparagraphs (H) through (Q), respectively;
8 and

9 (2) by inserting the following new subparagraph
10 after subparagraph (F):

11 “(G) The Department of Homeland Security.”.

12 **SEC. 913. CHIEF INFORMATION OFFICER.**

13 (a) *CLINGER–COHEN ACT.*—(1) The provisions en-
14 acted in section 5125 of the Clinger–Cohen Act of 1996 (di-
15 vision E of Public Law 104–106; 110 Stat. 684) shall apply
16 with respect to the Chief Information Officer of the Depart-
17 ment.

18 (2) Section 5131(c) of the Clinger-Cohen Act of 1996
19 (40 U.S.C. 1441(c)) is amended by inserting “or ap-
20 pointed” after “a Chief Information Officer designated”.

21 (b) *TITLE 44.*—Chapter 35 of title 44, United States
22 Code, is amended—

23 (1) in section 3506(a)(2)—

1 (A) in subparagraph (A) by striking “sub-
 2 paragraph (B)” and inserting “subparagraphs
 3 (B) and (C)”; and

4 (B) by adding at the end the following:

5 “(C) The Chief Information Officer of the Department
 6 of Homeland Security shall be an individual who is ap-
 7 pointed by the President.”;

8 (2) in each of subsections (a)(4) and (c)(1) of
 9 section 3506, by inserting “or appointed” after “the
 10 Chief Information Officer designated”; and

11 (3) in subsection (a)(3) of section 3506, by in-
 12 serting “or appointed” after “The Chief Information
 13 Officer designated”.

14 **TITLE X—NATIONAL HOMELAND** 15 **SECURITY COUNCIL**

16 **SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL.**

17 There is established within the Executive Office of the
 18 President a council to be known as the “Homeland Security
 19 Council” (in this title referred to as the “Council”).

20 **SEC. 1002. FUNCTION.**

21 The function of the Council shall be to advise the Presi-
 22 dent on homeland security matters.

23 **SEC. 1003. MEMBERSHIP.**

24 The members of the Council shall be the following:

25 (1) The President.

1 (2) *The Vice President.*

2 (3) *The Secretary of Homeland Security.*

3 (4) *The Attorney General.*

4 (5) *The Secretary of Health and Human Serv-*
5 *ices.*

6 (6) *The Director of Central Intelligence.*

7 (7) *The Secretary of Defense.*

8 (8) *The Secretary of the Treasury.*

9 (9) *The Secretary of State.*

10 (10) *The Secretary of Energy.*

11 (11) *The Secretary of Agriculture.*

12 (12) *Such other individuals as may be des-*
13 *ignated by the President.*

14 **SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.**

15 *For the purpose of more effectively coordinating the*
16 *policies and functions of the United States Government re-*
17 *lating to homeland security, the Council shall—*

18 (1) *assess the objectives, commitments, and risks*
19 *of the United States in the interest of homeland secu-*
20 *rity and to make resulting recommendations to the*
21 *President;*

22 (2) *oversee and review homeland security policies*
23 *of the Federal Government and to make resulting rec-*
24 *ommendations to the President; and*

1 (3) *perform such other functions as the President*
2 *may direct.*

3 **SEC. 1005. HOMELAND SECURITY BUDGET.**

4 *The Director of the Office of Management and Budget*
5 *shall prepare for the President a Federal homeland security*
6 *budget to be delivered to the Congress as part of the Presi-*
7 *dent's annual budget request.*

8 **SEC. 1006. STAFF COMPOSITION.**

9 *The Council shall have a staff, the head of which shall*
10 *be a civilian Executive Secretary, who shall be appointed*
11 *by the President. The President is authorized to fix the pay*
12 *of the Executive Secretary at a rate not to exceed the rate*
13 *of pay payable to the Executive Secretary of the National*
14 *Security Council.*

15 **SEC. 1007. RELATION TO THE NATIONAL SECURITY COUN-**
16 **CIL.**

17 *The President may convene joint meetings of the*
18 *Homeland Security Council and the National Security*
19 *Council with participation by members of either Council*
20 *or as the President may otherwise direct.*

Union Calendar No. 368

107TH CONGRESS
2^D SESSION

H. R. 5005

[Report No. 107–609, Part I]

A BILL

To establish the Department of Homeland Security,
and for other purposes.

JULY 24, 2002

Reported from the Select Committee on Homeland
Security with an amendment